85-2158

No._____

Supreme Court, U.S.
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In The Supreme Court of the United States

October Term, 1985

DALE BOWER
and
RICHARD DAILY,
Petitioners,

v.

RICHARD LYNG, ET AL.,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

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84 pgs

QUESTIONS PRESENTED

1. Whether the Farm Credit Act of 1971, U.S.C. Section 2001, *et seq.* provides a private cause of action against the Farm Credit System for enforcement of the Farm Credit Act.

2. Whether Petitioners have standing to obtain judicial review of actions of the Farm Credit Administration pursuant to the Administrative Procedures Act, 5 U.S.C. Section 701, *et seq.*

PETITION FOR CERTIORARI — LIST OF PARTIES

Petitioners are Dale Bower and Richard Daily, individuals who have borrowed monies from various entities of the Farm Credit System. George W. Bowling, GEODOT, Inc., and George Bowling Quality Meats, Inc., are no longer parties to this Petition as a result of a settlement.

Respondents, in addition to John R. Block, former Secretary of the United States Department of Agriculture, include the following: Donald E. Wilkinson, former Governor of the Farm Credit Administration; the Farm Credit Administration; Dwight L. Tripp, William D. Wompler, W. Proctor Scarborough, Leonard Fouts, Joseph A. Kiser, John D. Naill, Jewel Haaland, Ralph Raikes, Ralph Ball, Tom H. Carothers, Paul Enns, George W. Lacy, George Steele, all Board members of the Federal Farm Credit Board; the Fourth Farm Credit District; the Federal Intermediate Credit Bank of Louisville; the Federal Land Bank of Louisville; Robert P. Hester, Ray Mosstucker, B. Dale Harrison, James A. Rose, Lee F. Moffett, Gary French, Robert M. Hendrix, Sr., Board members of the Fourth Farm Credit District, Federal Intermediate Credit Bank of Louisville; Columbus Production Credit Association; Federal Land Bank Association of Columbus.

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In The Supreme Court of the United States

October Term, 1985

GEORGE W. BOWLING, ET. AL.,
Petitioners,

v.

JOHN R. BLOCK, ET. AL.,
Respondents.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

Petitioners pray that a writ of certiorari issue to review the decision of the United States Court of Appeals for the Sixth Circuit in the above-entitled case.

OPINIONS BELOW

The United States Court of Appeals, Sixth Circuit, by *per curiam* decision, affirmed the Order of the District Court *Bowling v. Block,* 785 F2d 556 (6th Cir. 1986).

The Federal District Court for the Southern District of Ohio, Eastern Division, dismissed Plaintiff's Amended Complaint. *Bowling v. Block,* 602 F. Supp. 667 (S.D. Ohio 1985).

JURISDICTION

The decision of the United States Court of Appeals was entered on March 13, 1986.

Jurisdiction is conferred by 28 U.S.C. Section 1254(l)..

An Order to extend the time in which to file the Petition from June 11, 1986 to June 30, 1986 was entered by the Supreme Court on May 30, 1986. These decisions are set forth in the Appendix.

CONTITUTIONAL AND STATUTORY PROVISIONS INVOLVED UNITED STATES CONSTITUTION, ARTICLE III, SECTION II:

This Petition involves the United States Consitution, Article III., Section II. These provisions appear in Appendix A30. This Petition further involves statutory provisions of the Farm Credit Act of 1971 including the following: 12 U.S.C. Sections 2001, 2012, 2013, 2015, 2033, 2051, 2072, 2073, 2077, 2078, 2093, 2094, 2095, 2096, 2227, 2243, 2252. These provisions appear in Appendix A31. This Petition further involves the Administrative Procedure Act, 5 U.S.C. Section 702 and 706. These provisions appear in Appendix A45.

STATEMENT OF THE CASE

This is a petition for a writ of certiorari seeking Supreme Court review of the decision of the United States Court of Appeals, Sixth Circuit, which decision affirmed the Federal District Court dismissal of Plaintiffs' Complaint.

Petitioners' Amended Complaint alleged violations of the Farm Credit Act, 12 U.S.C. Sections 2001, *et. seq.*, and further sought review of actions of the Farm Credit Administration pursuant to the Administrative Procedure Act, (APA) 5 U.S.C. Section 701, *et. seq.* Petitioners' Complaint asserted a number of other causes, which do not present issues for review. Petitioners requested the action be certified as a class action for the benefit of all farmers and ranchers. Petitioners invoked federal question jurisdiction under 28 U.S.C. Section 1331 and review of agency action under 28 U.S.C. section 1331, 1361 and 5 U.S.C. Sections 702, 706.

The Federal District Court entered its Opinion and Order dismissing Plaintiffs' Amended Complaint. In its Opinion, the Court held that the Farm Credit Act, 12 U.S.C. Sections 2001, *et. seq.*, does not provide for private remedies for breach of its provisions and therefore entered a dismissal of Plaintiffs' Amended Complaint for failure to state a cause of action. The Court further held that Petitioners lacked standing to seek judicial review of actions under the Administrative Procedure Act, 5 U.S.C. Sections 701, *et. seq. Bowling vs. Block,* 602 F. Supp. 667.

Petitioners timely appealed to the United States Court of Appeals, Sixth Circuit. On March 13, 1986, the Appellate Court, by way of *per curiam* decision, affirmed the District Court Order. *Bowling vs. Block,* 785 F.2d 556 (6th Cir. 1986).

STATEMENT OF THE FACTS

Petitioners' Amended Complaint was dismissed without trial. There is no record on appeal. This Honorable Supreme Court must accept as true the allegations of Petitioners' Amended Complaint. *Cannon vs. University of Chicago,* 441 U.S. 677 (1979); *Warth vs. Seldin,* 422 U.S. 490 (1975).

Inter alia, Petitioners' Amended Complaint contains the following allegations: Defendants violated 12 U.S.C. Section 2252 by failing to make annual reports to Congress on the condition of the System; Defendants prescribed and approved bylaws inconsistent with the Farm Credit Act in violation of 12 U.S.C. Sections 2012, 2033, 2072, 2093, 2227; Defendants failed to provide credit to borrowers at the "lowest reasonable cost" in violation of 12 U.S.C. Sections 2015, 2096; Defendants failed to approve distribution of profits to shareholders in violation of 12 U.S.C. Sections 2013, 2052, 2073, 2077, 2078, 2095, 2096; Defendants established regulations and bylaws granting to the System Banks and the Governor power to remove directors or chief executive officers in violation of 12 U.S.C. Sections 2033, 2093; Petitioners further allege that the Federal Defendants were empowered to review all such actions of the Farm Credit System and it failed in its review in violation of 12 U.S.C. Sections 2051, 2052, 2073, 2077, 2094, 2095, 2243.

With these allegations, Petitioners sought a private action for the benefit of the class including all farmers to judicially enforce the Farm Credit Act under federal question jurisdiction 28 U.S.C. Section 1331. Petitioners further sought judicial review of agency action (FCA), under the Administrative Procedure Act, 5 U.S.C. Sections 702, 706. Petitioners further invoked federal court jurisdiction under 28 U.S.C. Sections 1331, 1361.

Petitioners' Amended Complaint was dismissed. These appeals followed.

ARGUMENT IN SUPPORT OF CERTIORARI

Preliminary Statement

Petitioners are stockholders and borrowers of Columbus Production Credit Association and Federal Land Bank Association of Columbus. Petitioners alleged this action was brought for the benefit of all American farmers and ranchers and sought class certification. Petitioners initiated this action against the Farm Credit System seeking judicial review of various actions of the Farm Credit System. By way of their Amended Complaint, Petitioners pursued private remedies for alleged actions by Defendants in violation of the Farm Credit Act of 1971, 12 U.S.C. Sections 2001, *et. seq.* Petitioners further sought judicial review of actions of the Farm Credit Administration pursuant to the Administrative Procedure Act, 5 U.S.C. Sections 701, *et seq.*

Plea for Review

Historically, the Farm Credit System has provided many benefits to the American farmer. However, since 1971, the Farm Credit System has not provided the benefits to American agriculture commensurate with historical precedent, nor has it been implemented as intended by Congress. The result has been devastating to American agriculture. Many experienced, hard-working farmers are failing and having their farms foreclosed. Plaintiffs respectfully submit that the present agricultural depression has been caused by the overall failure of the Farm Credit System to implement the Farm Credit Act of 1971 as intended by Congress. Additionally, the Farm Credit Administration has not properly utilized its powers granted by 12 U.S.C. Section 2252 in order to force the Farm Credit System to operate as mandated by Congress.

Statutory Background
Farm Credit System

The Farm Credit System is a loosely knit group of Federally chartered institutions with the expressed purpose of providing financing and financing services to American agriculture and intended to operate as agricultural cooperatives.

The Farm Credit System commenced in 1916 with the establishment of 12 Federal Land Banks funded, in part, with government money. The Farm Credit Act of 1933 authorized a nationwide system of local credit cooperatives called Production Credit Associations ("PCA"), which were initially funded, in part, with government money. This government capital was to be repaid by farmer provided capital. Under the 1933 Act, the Farm Credit System was a depression-era governmental insitution which operated like many of the new deal programs but targeted toward farmers. The System was government operated and staffed by civil servants.

The Farm Credit Act has been amended many times over the years. By way of the Farm Credit Act of 1971, all prior farm credit legislation was repealed and the system was recreated as privately, farmer-owned institutions to be controlled by farmers to benefit American agriculture. No federal money remains in the lending system. All banks and associations are completely owned today by their various member-borrower stockholders.

The Farm Credit Act of 1971 ("Farm Credit Act"), 12 U.S.C. Sections 2001, *et seq.* establishes the various components of the Farm Credit System ("System"). The Farm Credit Act provided the enabling legislation for the following banking entities: 12 Federal Land Banks (Sections 2011-2020); Federal Land Bank Associations (Sec-

tions 2031-2034); 12 Federal Intermediate Credit Banks (Sections 2071-2079); Production Credit Associations (Sections 2091-2098); 12 Banks for Cooperatives and 1 Central Bank for Cooperatives (Sections 2121-2134).

The Farm Credit Act establishes requirements and guidelines for loan reserves, ownership, management and control of the individual entities of the Farm Credit System. Pursuant to the Farm Credit Act, supervision of the System is by the Farm Credit Administration, which has specific statutory duties of auditing, reporting, promulgating rules, regulations and establishing policy.

The Farm Credit Administration ("FCA") is an independent agency of the executive branch. It operatives under the Governor of the FCA, who is responsible for implementing the policies of the Federal Farm Credit Board ("FCB"). The FCB consists of 12 members appointed by the President together with one member who serves at the pleasure of the Secretary of Agriculture. 12 U.S.C. Section 2242. Pursuant to the Farm Credit Act, the Farm Credit Administration is responsible for implementing the Farm Credit Act, its policies and objectives. Congress has granted many powers to the Farm Credit Administration in order to ensure that the Farm Credit System operates as intended. Where necessary or appropriate to carry out the policy and objectives of the Farm Credit Act, the Farm Credit Administration is empowered to issue and amend or modify federal charters or the bylaws of the individual institutions of the system. Further, Congress has empowered the FCA to exercise such incidental powers as may be necessary or appropriate to fulfill its duties and carry out the purposes of the Farm Credit Act. 12 U.S.C. Section 2252. Pursuant to that section, the FCA is to make annual reports to Congress on the condition of the System and its institutions.

Petitioners seek review of the Farm Credit System and seek review of actions of the Farm Credit Administration. For purposes of this action, the Farm Credit Administration, the Governor, and the Federal Farm Credit Board shall be referred to jointly as "Federal Defendants" All other entities of the Farm Credit System shall be jointly referred to as the "Private Defendants".

I

THE FARM CREDIT ACT PROVIDES A PRIVATE CAUSE OF ACTION TO ENFORCE ITS PROVISIONS

Petitioners, and the class they represent, state a cause of action for judicial remedy for the enforcement of provisions of the Farm Credit Act. Though the Farm Credit Act does not explicitly provide for enforcement of its provisions by way of creating a private cause of action, such action is implicit in the Farm Credit Act.

Four Part Test

The question whether a Federal statute creates a cause of action, either expressly or by implication, is basically a matter of statutory construction. The failure of Congress expressly to consider making provision for a private remedy under a statute is not necessarily inconsistent with an intent to make such a remedy available. Annotation, *Implication of Private Right of Action From Provision of Federal Statute Not Expressly Providing For One --Supreme Court Cases,* 61 L. Ed. 2d 910. No general fac-

tor or particular set of circumstances generally characterized, can be said to be determinative of the question. Four general factors were stated in *Cort vs. Ash,* 422 U.S. 66 (1975), (hereinafter referred to as *Cort vs. Ash):*

> In determining whether a private remedy is implicit in a statute not expressedly providing one, several factors are relevant. First, is the plaintiff "one of the class for whose especial benefit the statute was enacted,"...Second is there any indication of legislative intent, explicit or implicit, either to create such a remedy or to deny one? Third, is it consistent with the underlying purposes of the legislative scheme to imply such a remedy for the plaintiff?...And finally, is the cause of action one traditionally relegated to state law, in an area basically the concern of the states, so that it would be inappropriate to infer a cause of action based solely on Federal law? 422 U.S. 66, 78.

The Court went on in analyzing each of the four factors, to emphasize the second factor.

> True, in situations in which it is clear that Federal law has granted a class of persons certain rights, it is not necessary to show an intention to create a private cause of action,...422 U.S. 66, 82.

The foregoing statement was reiterated in *Cannon vs. University of Chicago,* 441 U.S. 677 (1979).

Of the aforementioned four factors, there can be no dispute that Petitioners meet the first and fourth criteria.

Petitioners are farmers who have purchased stock in and borrowed monies from the Farm Credit System. Their cause is for remedies under an act created for farmers. Clearly, Petitioners are members of a class for whose especial benefit the Farm Credit Act was enacted. Additionally, their action is not one which may be maintained in state Court.

Having satisfied factors one and four, the legislative intent must be discerned. Indeed, from the progeny of *Cort vs. Ash,* it must be concluded that the primary inquiry is legislative intent. *Touche Ross and Co. vs. Redington,* 442 U.S. 560 (1979); and *Cannon vs. University of Chicago,* 441 U.S. 677 (1979).

The Farm Credit Act does not explicitly deny a private cause of action to enforce its provisions. Petitioners respectfully submit that legislative intent to create a private cause of action is implicit in the provisions of the Farm Credit Act and that such a remedy is consistent with the underlying purposes of the legislative scheme. *Cort vs. Ash,* and its progeny must be examined in order to glean the criteria for discerning legislative intent.

Cort vs. Ash, Analysis

Cort vs. Ash involved a shareholder suit to prevent the shareholders' corporation from using corporate funds to finance the cost of advertisements made in connection with the 1972 Presidential campaign in violation of 18 U.S.C.S. Section 610. This Supreme Court held that the criminal penalties provided by 18 U.S.C.S. Section 610 were meant to benefit the public at large, and not the particular class of shareholders bringing suit. This Court also emphasized that Congress had provided criminal penalties

for violation of 18 U.S.C.S. Section 610, and that finding militated against legislative intent to provide a separate private cause of action.

The Courts hereinbelow, emphasize that portion of the decision of *Cort vs. Ash* which sets forth a requirement for a particular private right to be enforced.

> The typical case in which the issue of whether a Federal statute contains an implies private right of action involves a statute which "...prohibits...some conduct, or which at least ostensibly protects the rights of a certain class of persons...". *Bowling vs. Block,* 602 F. Supp. 667, 671.

The lower Court ignored that portion of *Cort vs. Ash* which established an alternative to the specifically articulated right providing for a cause of action.

> In contrast, in those situations in which we have inferred a Federal private cause of action not expressly provided, there has generally been a clearly articulated right in the plaintiff,...*or a pervasive legislative scheme governing the relationship between the plaintiff class and the Defendant class in a particular regard,*...422 U.S. 66, 82. (emphasis supplied).

The District Court erred in its finding that the subject Federal statute must prohibit some specific conduct. Petitioners respectfully submit that the Farm Credit Act creates a Farm Credit System which is governed in its duties, responsibilities and powers. That legislative scheme thoroughly details the relationships of Petitioners and

each entity of the Farm Credit System. Each of the responsibilities and powers enumerated by the Farm Credit Act had only one intent - to benefit American agriculture. This honorable Supreme Court must conclude that implicit in the provisions of the Farm Credit Act is the right of the American farmer to enforce his benefits.

Cannon vs. University of Chicago, Analysis

This Supreme Court followed its four factor test in the case of *Cannon vs. University of Chicago,* 441 U.S. 677 (1979). This Court found that Title IV, Education Amendments of 1972 (20 U.S.C.S. Sections 1681 *et seq.*) conferred a benefit on persons discriminated against on the basis of sex, and that the petitioner in that case was a member of the class for whose especial benefit the statute was enacted. The Court went on to discern legislative intent. In its analysis, it considered the legislative history of the Act.

> Second, the Cort *(Cort vs. Ash)* analysis requires consideration of legislative history. We must recognize, however, that the legislative history of a statute that does not expressly create or deny a private remedy will typically be equally silent or ambiguous on the question. Therefore, in situations such as the present one "in which it is clear that Federal law has granted a class of persons certain rights, it is not necessary to show an intention to create a private cause of action, although an explicit purpose to deny such cause of action would be controlling." 441 U.S. 667, 694.

At footnote 13 of its Opinion, 441 U.S. 667, 690, the Supreme Court provided a general summary of the relevant case law by stating "with the exception of one case,...this Court has never refused to imply a cause of action where the language of the statute explicitly conferred a right directly on a class of persons that included the plaintiff in the case."

In the continuing evolution of the Supreme Court's delineation of rights of parties to be benefited by legislation, the Supreme Court continues to look at legislative history as some indicia of Congressional intent. However, legislative history is not the primary determinant.

> On this question the legislative history of the Act is entirely silent - a state of affairs not surprising when it is remembered that the Act concededly does not explicitly provide any private remedies whatever. *See Canon vs. University of Chicago,* supra, at 694, 60 L. Ed. 2d 560, 99 S. Ct. 1946. But while the absence of anything in the legislative history that indicated an intention to confer any private right of action is helpful to the respondent, it does not automatically undermine his position. This Court has held that the failure of Congress expressly to consider a private remedy is not inevitably inconsistent with an intent on its part to make such a remedy available. *Cannon vs. University of Chicago,* supra, at 694, 60 L. Ed. 2d 560, 99 S. Ct. 1946. Such an intent may appear implicitly in the language or structure of the statute, or in the circumstances of its enactment. *Trans-America Mortgage Advisors vs. Lewis,* 444 U.S. 11, 18 (1979).

In the foregoing case, this Supreme Court held that the Investment Advisors Act of 1940 (15 U.S.C.S. Section 80 B-1 *et seq.*), did not create a private cause of action for money damages. Petitioners must emphasize however, that the Supreme Court did hold that legislation to create a private cause of action for equitable remedies - including recision or injunction.

Factors Supporting Review

Clearly, in view of the relief granted in *Cannon vs. University of Chicago,* supra, and the holding in *TransAmerica Mortgage Advisors vs. Lewis,* supra, where the parties seeking relief by way of Court action to enforce the provisions of Federal legislation, the Court weighs three factors surrounding the action as militating in favor of providing a private cause of action. First, if the legislation is directed to a specific class, as opposed to bestowing general benefits upon the public at large, the Court is more inclined to find a private cause of action. Second, where the class of parties seeking relief requests the Court to exercise equitable jurisdiction, instead of demanding money damages, the Court is more likely to entertain jurisdiction. Third, where the legislation provides for criminal penalties, for its violation, the Court is more likely to find no private cause of action because the criminal penalties are adequate redress for violation.

The Farm Credit Act is directed to American farmers. Petitioners, as farmers, seek only equitable relief. And no criminal penalties are provided in the statute. All factors militate in favor of the Farm Credit Act providing a private cause of action.

The Farm Credit Act

12 U.S.C. Section 2001, provides as follows:

Congressional Declaration Of Policy And Objectives

(a) It is declared to be the policy of Congress, recognizing that a prosperous, productive agriculture is essential to a free nation and recognizing the growing need for credit in rural areas, that a farmer-owned cooperative Farm Credit System be designed to accomplish the objective of improving the income and well-being of the American farmers and ranchers by furnishing sound, adequate, and constructive credit and closely related services to them, their cooperatives, and to selected farm-related businesses necessary for efficient farm operations.

(b) It is the objective of this chapter to continue to encourage farmers' and rancher-borrowers' participation in the management , control and ownership of permanent system of credit for agriculture which will be responsive to the credit needs of all types of agricultural producers having a basis for credit...

In determining whether it is consistent with the underlying purposes of the legislative scheme to imply a remedy, attention is directed to the purposes clause of the Farm Credit Act, 12 U.S.C. Section 2001. A statement of principles or purposes cannot, standing alone, be a source of a private right of action. However, in construing other sec-

tions of the Act, and in construing whether the Act creates a remedy, the purposes clause must be closely examined. *Kodish vs. United Airlines, Inc.*, 463 F. Supp. 1245 (D. Colo. 1979), aff'd. F.2d 1301 (10th Cir. 1980).

The Farm Credit Act creates a unique financing system which operates as a cooperative for the benefit of farmers and ranchers which is to be owned, operated and managed by farmers and ranchers. Petitioners have generally alleged, *inter alia,* that the Farm Credit System is not providing the American farmer with all of the intended rights and benefits as set forth in the Farm Credit Act. Petitioners have further alleged failure of the Farm Credit Administration to supervise the Farm Credit System to assure all intended benefits to Plaintiffs, and the class they represent. No other legislation which has been the subject of litigation created a private governmental instrumentality for the benefit of a specific class and then provided for supervision of those private institutions by a governmental agency.

The Farm Credit Act provides a general enabling provision which enumerates powers and duties for each of the individual entities of the Farm Credit System. In order to ensure that the operations of the System comport with the Farm Credit Act of 1971, Congress decreed that the Farm Credit System shall act according to its bylaws "...not inconsistent with law...". 12 U.S.C. Sections 2012(9), 2033(8), 2072(9), 2093(16), and 2227(2). Petitioners seek only judicial review to assure that the Farm Credit Act is fully implemented and that the System acts "not inconsistent with law".

All authority to act derives from the individual entity's bylaws. Had Congress intended the individual entities of the Farm Credit System to operate with unbridled discretion, then Congress would not have limited its actions to

those "...not inconsistent with law...". Congress does not have the power to review each of the components of the Farm Credit System. Absent judicial review there would be no determination whether or not the system acts consistent with law.

The Court has the authority, and the obligation, to review the subject regulations to determine whether or not they carry into effect the will of Congress. *Mourning vs. Family Public Services, Inc.*, 411 U.S. 356 (1973); *United States, ex rel. Chase vs. Wald,* 557 F2d 157 (8th Cir. 1977) (cert. denied). Proper application of the four-prong test of *Cort vs. Ash* to Petitioners requires this Court hold, that the lower Court erred in dismissing Petitioners Amended Complaint:

i. Petitioners are clearly members of a class for whose especial benefit the Farm Credit Act was enacted and therefore the primary test of *Cort vs. Ash* has been satisfied;

ii. Legislative intent to either deny or create a private cause is not explicit in the Farm Credit Act, however, the Farm Credit Act mandates that the regulations and bylaws promulgated thereunder be "not inconsistent with law". Therefore, Petitioners judicial remedies are implicit in the Act;

iii. A private remedy must be implicit in the Farm Credit Act in order to ensure the Farm Credit System provides all benefits intended by Congress; and

iv. There is no similar cause of action provided under Ohio law.

II

THE ADMINISTRATIVE PROCEDURE ACT PROVIDES FOR JUDICIAL REVIEW OF ACTIONS OF THE FARM CREDIT ADMINISTRATION

Count II of Petitioners' Amended Complaint alleges that the Federal Defendants failed to administer the Farm Credit Act in accordance with the law and seeks judicial review. The trial court dismissed Petitioners' Second Cause of Action for judicial review pursuant to the Administrative Procedure Act, holding that Plaintiffs lack standing to present their claims. The Federal District Court judge failed to grasp the amorphis concept of "standing". Like the respondents in *Angelton vs. Pierce,* 574 F. Supp. 719 (D.C. New Jersey 1983), the Federal District Court:

> ...(H)as confused standing with failure to state a claim. The two are conceptually distinct: when standing is at issue, the Court asks whether the Plaintiffs are the proper parties to bring the action, whereas failure to state a claim focuses not on the parties but on the existence of a cuase of action (i.e. on the merits). 574 F. Supp. 719, 726, citing as authority *Kirby vs. Department of H.U.D.,* 675 F2d 60 (3d Cir. 1982).

5 U.S.C. Section 702, provides, in part, as follows:

> *Right of Review.*
>
> A person suffering legal wrong because of agency action, or adversly effected or aggrieved by

agency action within the meaning of a relevant statute, is entitled to judicial review thereof. An action in a Court of the United States seeking relief other than money damages and stating a claim that an agency or an officer or an employee thereof acted or failed to act in an official capacity or under color of legal authority shall not be dismissed nor relief be denied on the grounds that it is against the United States or that the United States is an indispensible part...

5 U.S.C. Section 706 provides, in part, as follows:

To the extent necessary to decision and when presented, the reviewing Court shall decide all relevant questions of law, interpret Constitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing Court shall:

(1) Compel agency action unlawfully withheld or unreasonably delayed; and

(2) Hold unlawful and set aside agency action,

* * *

(C) In excess of statutory jurisdiction authority or limitations, or short of statutory right;

(D) Without observance of procedure required by law;

* * *

In dismissing Count II of Petitioners' Amended Complaint, the trial Court held that Petitioners lack standing to seek judicial review of the Farm Credit Administration actions pursuant to the Administrative Procedure Act. In so holding, the Court relied upon general findings that Petitioners made broad and vague allegations which were far too sweeping to allow judicial review. However, as set forth hereinabove, Petitioners made many specific allegations for which judicial review would be warranted and, if taken individually, not unduly burdensome.

This action under the APA requires judicial review.

Reviewability Presumed

The absence of a special review statute does not preclude review. The non-reviewability of an administrative action taken pursuant to a statute or regulation is "not lightly to be inferred". Judicial review of administrative action is the rule, and non-reviewability the exception which must be demonstrated. *Barlow vs. Collins,* 397 U.S. 159 (1970). Only upon showing of "clear and convincing evidence" should the Courts restrict access to judicial review. *Abbott Laboratories vs. Gardner,* 387 U.S. 136 (1967); *Rusk vs. Cort,* 369 U.S. 367 (1962). Non-statutory review of agency action may be obtained if a source of jurisdiction and waiver of sovereign immunity can be found. 5 U.S.C. Section 702, together with 28 U.S.C. Section 1331, provide for judicial review of agency action. Further, the Administrative Procedure Act is a waiver of sovereign immunity. Specifically, in the case at bar, sovereign immunity is waived pursuant to 12 U.S.C. Sections 2012, 2072, and 2093.

Exemptions from application of the Administrative Procedure Act will not lightly be presumed, but must be expressly provided. *Brownell vs. We Shung,* 352 U.S. 180 (1956).

The Court in *Glacier Park Foundation vs. Watt,* 663 F.2d 882, 885 (9th Cir. 1981), stated as follows: "Regardless whether a statute implies private right of action, administrative actions thereunder may be challenged under the APA unless they fall within the limited exceptions of the act". Judicial review is not explicitly excluded by the Farm Credit Act of 1971. Therefore, judicial review "shall not be foreclosed unless Congress has forbidden review in unmistakeable terms". *Sierra Club vs. Peterson,* 705 F.2d 1475, 1478-79 (9th Cir. 1983).

At page twelve of its Opinion, the lower Court correctly states as follows:

> The Administration (Federal Farm Credit Administration) is also charged with the task of establishing a general policy designed to effect the purposes of the Farm Credit Act. 12 U.S.C. Sections 2243, 2252.

In view of the Congressional mandate that the Farm Credit System act "not inconsistent with law" 12 U.S.C. Sections 2012, 2033, 2072, 2093, and 2227, and further in view of the many powers granted to the Farm Credit Administration pursuant to 12 U.S.C. Section 2252, including "all incidental powers as may be necessary or appropriate to fulfill its duties and to carry out the purposes of the Farm Credit Act", clearly Congress has mandated that the Farm Credit Administration perform all actions necessary to fully implement the Farm Credit Act. Plaintiffs merely seek review of agency action pursuant to 5

U.S.C. Section 706 in order to "...(1) compel agency action unlawfully withheld and unreasonably delayed; and to (2) hold unlawful and set aside agency action,...(C) in excess of statutory jurisdictional authority or limitation....

Standing

The Federal District Court judge ignored the mandatory review required by the APA and held Petitioners lack standing. The trial Court analysis was faulty.

Standing is presented and discussed in many cases but never clearly defined. Indeed it has been commented that the standing doctrine is no more than a convenient tool to avoid uncomfortable issues or to disguise a surreptitious ruling on the merits. One commentary, upon summarizing the decisions, concluded that Courts ritualistically recite the formula, then "the Court chooses up sides and decides the case." Chayes, *Foreward: Public Law Litigation and the Burger Court,* 1982, 96 Harv. L. Rev. 4, 8-26.

Further comment includes the following:

> Despite the clear theoretical separation, it seems clear that standing often will be denied because of a preliminary estimate that plaintiff will not prevail on the merits. Care must be taken lest this test become a particularly fruitful source of charges that Courts have chosen to disguise decisions on the mertis as matters of standing. 13 Wright, Miller and Cooper, *Federal Practice and Procedure* 2d Section 3531. 7, p. 515 (1984)

In examining the standing issue, it must be emphasized that attention must be focused upon the particular plaintiff seeking to bring the claim before the Federal Court, not upon the issues or merits of the case. *O'Hair vs. White,* 675 F.2d 680 (C.A. 5th 1982)

> Under traditional standing analysis, the Court does not reach the substantive issues in Plaintiff's Complaint.
>
> ***
>
> instead, the Court assumes *arguendo* that plaintiff has pleaded and could prove a violation of substantive law, and asks only whether Plaintiff has alleged a concrete injury and a sufficient causal relationship between the injury and violation. *Industrial Investment Devel. Corp. vs. Mitsui & Co.,* 671 F.2d 876, 888, 889 (C.A. 5th 1982).

Case law sets forth the following generalizations for establishing standing: Plaintiff must allege (1) distinct and palpable personal injury, that is (2) fairly traceable to the challenged action, and that is (3) unlikely to be redressed by the requested relief. However, like the concept of justiciability, of which it is a part, the doctrine of standing is amorphous, presenting a confusing blend of constitutional requirements and prudential limitations. *Warth vs. Seldin,* 422 U.S. 490 (1975). There are many abstract summarizations of the concept of standing, but their enumeration, devoid of legal context or factual content, would serve little purpose. As stated by Justice Douglas, the standing issue, framed in broad categories but dependant upon

highly particularized inquiries and the exercise of considerable discretion by the Courts, is of such a nature as to render "generalizations...largely worthless as such". *Association of Data Processing Service Organizations vs. Campt,* 397 U.S. 150 (1970).

Properly considered, when standing is placed in issue in a case, the question is whether the person whose standing is challenged is a proper party to request adjudication of a particular issue and not whether the issue itself is justiciable. *Valley Forge Christian College vs. Americans United For Separation of Church and State, Inc.,* 454 U.S. 464 (1982). The true nature of standing is whether a plaintiff sufficiently adversary to a defendant to create a case or controversy which satisfies the requisities of U.S. Const. Article III, Section 2. The actual injury required by Article III must exist solely by virtue of the statute creating legal rights, the invasion of which creates standing. *Warth vs. Seldin,* supra. The issue of standing is a question separate and apart from the merits of the substantive claims. *Warth vs. Seldin,* supra. Whether a petitioner has asserted a cause of action depends not on the quality or extent of his injury, but on whether the class of litigants of which petitioner is a member may use the courts to enforce the right at issue. Focus must therefore be on the nature of the right the petitioner asserts. *Davis vs. Passman,* 442 U.S. 228 (1979). Injury may consist of the unwanted result of the government rule, whether or not a pecuniary loss is sustained. *Arlington-Heights vs. Metropolitan Housing Corp.,* 429 U.S. 252 (1977). The fact that the injury is relatively small in magnitude does not negate a finding of injury in fact. *United States vs. SCRAP,* 412 U.S. 669 (1973). Further, the fact that harm occurs indirectly does not preclude standing. When a governmental prohibition or restriction imposed upon one party causes specific harm

to a third party, in contravention of the subject statute, the indirectness of the injury does not necessarily deprive the person harmed of standing to vindicate his or her right. *Warth vs. Selding,* 422 U.S. 490 (1975); *Roe vs. Wade,* 410 U.S. 113 (1973). Attention is directed to the case of *Simon vs. Eastern Kentucky Welfare Rights Organization,* 426 U.S. 26 (1976), in which this Court noted that although the injury was indirect and the line of causation attenuated, the Complaint nevertheless alleged specific and perceptible harm flowing from agency action sufficent to withstand a motion to dismiss.

> Objections that those challenging action of Federal Administrative agencies lack standing are evaluated by reference to two queries: (1) the constitutional one - "whether the plaintiff alleges that the challenged action has caused him injury in fact, economic or otherwise," and (2) prudential considerations, including, "whether the interest sought to be protected by the complaintant is arguably within the zone of interest to be protected or regulated by the statute or constitutional guarantee in question". *Kirby vs. United States Government,* 675 F.2d 60 (1982).

The Court held Plaintiffs' allegations that they would suffer both financial and nonfinancial harm because of the proposed relocation of a hospital facility sufficient to satisfy the injury in fact requirement of the standing doctrine. The actual or threatened injury required by Article III may exist solely by virtue of statutes creating legal rights, the invasion of which creates standing. *Warth vs. Seldin,* 422 U.S. 490 (1979).

The evolution of standing has yielded the following three part test. In order to have standing to obtain to review of administrative action, there must be (1) an allegation of injury in fact; (2) an assertion that arbitrary agency action injured an interest arguably within the zone of interests to be protected or regulated by the statute in questions; and (3) no clear and convincing indication of legislative intent to withhold judicial review. *Gull Airborne Instruments, Inc. vs. Weinberger,* 694 F.2d 838 (D.C. Cir 1982).

From the foregoing, it must be concluded that Petitioners satisfy the requirements of standing. From a review of Petitioners' Amended Complaint, in light of the relevant authority, this Court must find that Petitioners have set forth allegations which place them within the zone of interest to be protected by the Farm Credit Act and have further alleged that their interests have been damaged by actions of the Farm Credit Administration. There is no clear and convincing indication of legislative intent to withhold judicial review.

CONCLUSION

The Farm Credit System is a unique system of organizations created solely for the benefit of the American farmer. It is to be owned, managed, and operated by the American farmer as a cooperative of farmers. The Farm Credit System was established during the great depression with the essential purpose of assisting farmers through rough economic times. Petitioners request this Court take judicial notice of the plight of the American farmer today. The present times are the first to put the Farm Credit System to the test --- it has failed. Petitioners have alleged, generally and specifically, that American farmers are not receiving the benefits of the system as intended by Congress. Petitioners will show at trial that the plight of the American farmer follows from the failure of the Farm Credit System to follow the mandates of the Farm Credit Act of 1971.

The Farm Credit Act of 1971 states that the Farm Credit System shall act according to its "bylaws not inconsistent with law..." Though judicial Review is the sole means of assuring enforcement of those sections, Defendants would have this Court deprive the American farmer of seeking his rightful benefits through the judiciary.

The Farm Credit Admnistration is to supervise the Farm Credit System in accordance with the Farm Credit Act of 1971. The Federal Defendants accept no responsibility for any wrongs within the Farm Credit System and further claim absolute discretion. The primary purpose of the Administrative Procedure Act is to assure judicial review and enforcement of Congressional mandates. If this Court were to follow the course proposed by Defendants, the American farmer would be effectively deprived of the ownership, management and control of his cooperative Farm Credit System.

IN VIEW OF THE FOREGOING, this Supreme Court should grant this Petition For Writ of Certiorari.

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APPENDIX

No. 85-3204

United States Court of Appeal

For the Sixth Circuit

George W. Bowling, et. al.,
Plaintiffs-Appellants,
v.

John R. Block, et al.,
Defendants-Appellees.

On Appeal from the United States District Court for the Southern District of Ohio.

Decided and Filed March 13, 1986

Before: KENNEDY and CONTIE, Circuit Judges: and GIBSON, District Judge.*

PER CURIAM. This is an appeal from the district court's dismissal of the appellants' complaint. The appellants' complaint alleged violations of the Farm Credit Act, 12 U.S.C. §§ 2001 *et seq.*, and the Truth-In-Lending Act, 15 U.S.C. §§ 1601 *et seq.* The district court held that

there was no implied private right of action under the Farm Credit Act, that the appellants lacked standing under the Administrative Procedure Act (APA), 5 U.S.C. §§ 701 *et seq.* to review alleged violations of the Farm Credit Act, and that the appellants did not allege sufficient facts to maintain a Truth-In-Lending Act claim. On appeal, the appellants seek review of the first two holdings of the district court.

The plaintiffs-appellants are individuals and corporations which have engaged in the farming industry and have received credit from various Farm Credit Systems entities. The named defendants are various individuals and entities involved in the Farm Credit System.

In their complaint, the appellants alleged numerous violations of the Farm Credit Act committed by the defendants. They sought review of, and relief from, these actions under the Farm Credit System.

The district court held that there was no private right of action under the Farm Credit Act. We agree. In *Cort v. Ash,* 422 U.S. 66 (1975) the Supreme Court set forth several factors to consider when determining whether a statute creates an implied right of action:

> First, is the plaintiff "one of the class for whose *especial* benefit the statute was enacted,"...—that is, does the statute create a federal right in favor of the plaintiff? Second, is there any indication of legislative intent, explicit or implicit, either to create such a remedy or to deny one?...Third, is it consistent with the underlying purposes of the legislative scheme to imply such a remedy for the

> plaintiff?...And finally, is the cause of action one traditionally relegated to state law, in an area basically the concern of the States, so that it would be inappropriate to infer a cause of action based solely on federal law?

Id. at 78 (citations ommitted)(original emphasis). In analyzing these factors, "[t]he central inquiry remains *whether Congress intended* to create, either expressly or by implication, a private cause of action." *Touche Ross & Co. v. Redington,* 442 U.S. 560, 575 (1979) (emphasis added). *See also California v. Sierra Club,* 451 U.S. 287, 293 (1981). We agree with the district court that the Farm Credit Act "does not create specific enforcible [sic] rights which would necessitate the existence of a private right of action," *Bowling v. Block,* 602 F. Supp. 667, 670-71 (S.D. Ohio 1985), and that there is no support for the conclusion that Congress intended to create a private right of action under the Farm Credit Act in favor of these appellants. *See also Smith v. Russellville Production Credit Ass'n,* 777 F.2d 1544, 1546-48 (11th Cir. 1985).

The appellants next agrue that the federal defendants' actions are reviewable under the APA. The federal defendants state that the appellants cannot maintain these claims for three reasons: (1) the appellants lack Article III standing; (2) the appellants do not meet the APA's requirements for obtaining judicial review; and (3) the appellants have not stated a claim upon which relief can be granted, Fed. R. Civ. P. 12(b)(6). After careful consideration of these issues, we believe the district court's analysis is persuasive and we choose to adopt it as our own. *See Bowling v. Block,* 602 F. Supp. at 673-74.

Accordingly, the order of the district court is AFFIRMED.

UNITED STATES DISTRICT COURT
SOUTHERN OHIO DISTRICT
EASTERN DIVISION

George W. Bowling, *et al.*,
Plaintiffs,

v. Case No. C-2-84-135

John R. Block, et at.,
Defendants

Decided and Filed February 6, 1985

OPINION AND ORDER

Plaintiffs, various entities engaged in the farming industry, have filed this action against numerous defendants alleging violations of the Farm Credit Act, 12 U.S.C. §2001 *et seq.*, and the regulations promulgated under it, and the Truth-in-Lending Act, 15 U.S.C. § 1601 *et seq.* Plaintiffs have also attached, pursuant to this Court's pendant jurisdiction, several state causes of action. The defendants in this action are John R. Block, Secretary of the United States Department of Agriculture, Donald E. Wilkinson, Governor of the Farm Credit Administration, the Farm Credit Administration, individual members of the Federal Farm Credit Board, the Fourth Farm Credit District, The Federal Intermediate Credit Bank of Louisville, The Federal Land Bank of Louisville, in-

dividual board members of the Fourth Farm Credit District, and the Columbus Production Credit Association. This matter is currently before the Court on the defendants' motions to dismiss.

STATEMENT OF THE CASE

Plaintiffs, in this action, are essentially seeking a full-scale review of the present conditions under which the Farm Credit System is operated. Specifically, plaintiffs charge that the defendants, who constitute the Farm Credit System, have failed to act in accordance with the purposes for which the Farm Credit Act was promulgated. In fact, plaintiffs go so far as to assert that the defendants, in failing to act in a manner consistent with the intent of the Farm Credit Act,

> ...have unlawfully, wrongfully, and intentionally usurped powers not granted by the Farm Credit Act and abused and misused powers granted by the Farm Credit Act.

The Farm Credit Act, 12 U.S.C. § 2001 *et seq.*, created the Farm Credit System.

The Farm Credit System was created for the specific purpose of improving the "income and well-being" of the American farmers and ranchers. To achieve this objective, the System was intended to supply "sound, adequate, and constructive credit and closely related services" specifically tailored to the peculiar needs of the farming community. Further, the debtor-participants were encouraged, through stock ownership in the creditor-institutions, to

participate in the management, ownership and control of the System. *Daley v. Farm Credit Administration,* 454 F. Supp. 953 (D. Minn. 1978). In objecting to the manner in which is it operated, plaintiffs argue that the current Farm Credit System

> ...does not operate to provide all [of the] benefits intended by the legislation and is not responsive to the credit needs of Plaintiffs and Plaintiffs have suffered corresponding substantial injury and damages.

In addition to their allegations that the defendants have violated their duties created by the Farm Credit Act, plaintiffs also allege that the defendants have violated their duties created by the federal Truth-in-Lending Act, 15 U.S.C. §§ 1601 *et seq.* Plaintiffs broadly allege that the defendants failed to make certain disclosures required by Regulation Z, 12 C.F.R. §§ 226.1 *et seq.* Specifically, plaintiffs assert that the defendants' conduct surrounding their loan transactions with plaintiffs amounted to a failure

> ...to provide Disclosure Statements setting forth with particularity the terms and conditions of the subject notes and mortgages.

Further, plaintiffs charge that the defendants failed to disclose the interest rates which they actually were charging plaintiffs.

Finally, plaintiffs assert numerous state law causes of action which they attach to this action pursuant to this Court's pendant jurisdiction. First, plaintiffs allege that

the defendants breached their contractual obligations to improvide the income and well-being of the farming community. Plaintiffs assert that such obligations are implicit in the "Congressional declaration of policy and objectives" section of the Farm Credit Act, 12 U.S.C. § 2001. Second, plaintiffs allege that the defendants breached a contract with plaintiffs because the stock which plaintiffs where required to purchase as a prerequisite for obtaining credit through the Farm Credit System did not pay dividends, appreciate in value or provide plaintiffs with an effective vote, and caused plaintiffs borrowing costs to exceed those costs for which the loan contracts provided. Third, plaintiffs allege that the defendants breached "substantial" fiduciary duties which were implicitly created under the Farm Credit Act and which are evidenced by the unique relationship existing between plaintiffs and defendants. Finally, plaintiffs allege that, as shareholders in defendants' organizations, they are entitled to share in the profits derived by such organizations through their functions as lending institutions. With respect to plaintiffs' final state law claim, it is charged that the defendants have failed to fulfill their duty "to provide credit to shareholder/borrowers at the 'lowest reasonable cost.'"

DISCUSSION

The defendants in this actions may be, and should be for the purpose of addressing the subject motions to dismiss, separated into two groups. The first group of defendants is the Federal defendants. This group consists of Secretary Block of the Department of Agriculture, Donald Wilkinson, Governor of the Farm Credit Ad-

ministration, the Farm Credit Administration, the Federal Farm Credit Board and its individual members. The second group of defendants consists of the remaining defendants. The Court will address both groups of defendants separately. The Court will begin by addressing the nonfederal defendants' motion to dismiss.

I.

Plaintiffs' first claim against the nonfederal defendants is that they have violated numerous specific sections of the Farm Credit Act. The nonfederal defendants respond to plaintiffs' allegations by arguing that plaintiffs cannot maintain their claims because the Farm Credit Act does not create a private right of action. It is clear that the Farm Credit Act does not contain an express provision granting such a right. Plaintiffs maintain, however, that, notwithstanding this lack of an express provision, such a right is implicit within the Act.

In *Cort v. Ash,* 422 U.S. 66 (1978), the Supreme Court addressed the issue of whether an implied private right of action exists with respect to a federal statute.

> In determining whether a private remedy is implicit in a statute not expressly providing one, several factors are relevant. First, is the plaintiff "one of the class for whose *especial* benefit the statute was enacted,"...that is, does the statute create a federal right in favor of the plaintiff? Second, is there any indication of legislative intent, explicit or implicit, either to create such a remedy or to deny one?...Third, is it consistent with the

> underlying purposes of the legislative scheme to imply such a remedy for the plaintiff?...And finally, is the cause of action one traditionally relegated to state law, in an area basically the concern of the States, so that it would be inappropriate to infer a cuase of action based solely on federal law?

Id. at 78. Fortunately, with respect to the Farm Credit Act, at least one other Federal Court has thoroughly analyzed the four-factor *Cort v. Ash* test to determine whether a private right of action may implied. In *Hartman v. Farmers Production Credit Association of Scottsburg,* No. 81-163-C (S.D. Ind. Mar. 18, 1983), it was determined that an implied private right of action did not exist under the Farm Credit Act. In making its determination, the court concluded:

> The Farm Credit Act does not expressly provide a private cause of action for violation of its provisions, nor can one be implied....Even assuming the Hartmans fall within the class for whose especial benefit the Farm Credit Act was enacted, the other three criteria are not met. Congress did not intent [sic] to provide a federal remedy, a private cause of action is not necessary to attain the underlying purpose of the Act, and the plaintiff's cause of action is one traditionally relegated to state law. The Court certainly would not condone the conduct alleged here, but the Hartmans have an adequate remedy in the state court.

Id. at 12.

Despite the somewhat differing contexts, this Court must concur with the *Hartman* Court's conclusion. It is readily apparent that the Farm Credit Act merely established the machinery by which its purpose, to augment the amount of credit available to the farming community, would be effected. It does not create specific enforceable rights which would necessitate the existence of a private right of action. *Id.* at 10 Further, the Act intimates that the specific entities it creates for the purpose of providing the needed credit -- the production credit associations, the federal land bank associations and the bans for cooperative -- are to be operated much like any other private lending institution. Therefore, whatever disputes arise between plaintiffs and the nonfederal defendants much be resolved in the same manner that such a dispute would be resolved if the defendants were common banks or savings and loans.

The typical case in which the issue of whether a federal statute contains an implied private right of action involves a statute which"...prohibits...some conduct, or which as least ostensibly protects the rights of a certain class of persons...." *Marx v. Centran Corp.*, 747 F.2d 1536, 1544 (6th Cir. 1984). With respect to the Farm Credit Act, it is apparent that the class of persons targeted as the immediate beneficiary consists of farmers and ranchers. However, the Act certainly does not prohibit specific behavior. Nor does it protect any specific right conferred by it or any other federal statutory or constitutional provision on plaintiffs. As noted above, the Farm Credit Act merely establishes the mechanism by which alternative forms of credit may be made available to farmers and ranchers.

The second federal cause of action which plaintiffs allege in their amended complaint against the nonfederal defendants is that such defendants have violated the federal Truth-in-Lending Act ("TILA"). Specifically, plaintiffs claim that the nonfederal defendant violated Regulation Z which was promulgated pursuant to the TILA. 12 C.F.R. § 226.1. Regulation Z is designed to "...promote the informed use of consumer credit by requiring disclosure about its terms and cost." 12 C.F.R. §226.1 (b). Plaintiffs assert that the nonfederal defendants failed to make the required disclosures.

In response to plaintiffs' allegations, the nonfederal defendants assert that plaintiffs have failed "...to allege facts which, if taken as true, indicate a transaction within the ambit of TILA and acts by the defendants which violate TILA." The TILA is primarily concerned with consumer credit transactions. 12 C.F.R. § 226.1 (b). Such transactions are defined by the statute as "primarily for personal, family or household purposes." 15 U.S.C. §1602 (h). *Thorns v. Sundance Properties,* 726 F.2d 1417 (9th Cir. 1984). Specifically exempted from the TILA's coverage are:

> Credit transactions involving extensions of credit primarily for business, commercial, or agricultural purposes, or to government or governmental agencies or instrumentalities, or to organizations.

15 U.S.C. § 1603(1). The nonfederal defendants charge that neither the types of transactions involved herein nor the entities which were parties to those transactions meet these fundamental requirements for TILA coverage.

It is clear to the Court that many of the parties to this action may not be subject to, or benefit from, the strictures of the TILA and that many of the credit transactions of which plaintiffs complain expressly fall outside of the purview of the Act. Plaintiffs GeoDot, Inc. and George Bowling Quality Meats, Inc. are excluded under 15 U.S.C. § 1603(1). The individual board members of the FICB of Louisville and the FLB of Louisville are excluded under §1602(f). Further, any credit transaction pursued for an agricultural or business purpose is excluded, as noted above, by § 1603(1). It is apparent that the overwhelming majority of the transactions being challenged by plaintiffs were pursued for agricultural or business related purposes.

The Court is cognizant of the fact that the Farm Credit System does not only provide credit to farmers and ranchers for solely agricultural and business purposes. Pursuant to 12 U.S.C. § 2018, the System provides for loans to rural residents for rural housing financing. Further, the TILA itself intimates that certain Farm Credit System credit transactions will fall within its coverage. *See* 15 U.S.C. § 1607(a)(6). In paragraph 10 of their amended complaint, plaintiffs state, in relevant part:

> Further, Plaintiff, Dale Bower, has entered a consumer credit transaction with Defendant, Federal Land Bank. Further, Plaintiff, Richard Dailey, has entered credit transactions for agricultural purposes as well as certains consumer credit transactions with Defendant, Production Credit Association.

Plaintiffs rely upon this allegation in an attempt to rebut the defendants' argument that they do not state a claim for relief under the TILA.

Initially, the Court observes that the allegation, upon which plaintiffs base their argument that the TILA is applicable, is extremely specific with respect to the parties included within its scope. First, it makes reference to only two of the five plaintiffs, Dale Bower and Richard Dailey. In fact, with respect to the other three plaintiffs, it is admitted that the credit transaction from which they seek relief were entered into for solely agricultural purposes. As noted above, the TILA expressly excludes form its coverage transactions entered into primarily for agricultural purposes. Further, the subject allegation includes references only to defendants "Federal Land Bank" and "Production Credit Association." The remaining nonfederal defendants do not appear to be involved in plaintiffs' allegations of violations of the TILA. It is clear to this Court, therefore, that those remaining nonfederal defendants, as well as plaintiffs George Bowling, GeoDot, Inc. and George Bowling Quality Meat, Inc., may not, in this instance, be subjected to, or benefit from, the prescriptions of the TILA.

Paragraph 10 of the amended complaint is a feeble attempt to demonstrate a cause of action under the TILA. With respect to the four plaintiffs and defendants to which it does allude, it merely alleges that they were involved in "consumer credit transaction." The TILA excludes many types of credit transactions from its coverage, including certain "consumer credit transaction." *See* 15 U.S.C. §1603(3). Plaintiffs have failed to allege facts from which this Court could conclude that the types of transactions from which they seek relief fall within the purview of the TILA. *See Conley v. Gibson,* 355 U.S. 41 (1957). To indicate that they are entitled to relief under the TILA, plaintiffs must be somewhat more specific with respect to

the actual purpose for which they entered into the subject transaction. Plaintiffs, therefore, have failed to state a cause of action under the TILA.

The Court is aware that, instead of pursuing the harsh course of dismissal, it may allow plaintiffs to amend their complaint to allege additional facts which may indicate TILA violations. Given the circumstances of this case, however, particularly the lack of involvement of most of the parties in plaintiffs' allegations of violations of the TILA, the Court does not believe that an opportunity to amend is warranted. The Court does note, however, that, if plaintiffs Bower and Dailey believe that they do have a cause of action under the TILA, although one is not alleged here, they may wish to file a separate action specifically delineating such violation.

II.

As noted above, the federal defendants consist of the Secretary of the Department of Agriculture, the Farm Credit Administration and its Governor and the Federal Farm Credit Board and its current and certain past members (hereinafter collectively referred to as the "Administration."). The Administration is an independant agency in the executive branch of the Government. It is composed of the Federal Farm Credit Board and its Governor and certain other personnel necessary to perform the Administration's functions. 12 U.S.C. § 2241. Such functions, carried out by the Federal Farm Credit Board, include the supervision of lending institutions, including the nonfederal defendants in this case, which are members of the Farm Credit System and which are

specifically created by the Farm Credit Act. The Administration is also charged with the task of establishing a general policy designed to effect the purposes of the Farm Credit Act. 12 U.S.C. §§ 2243, 2252. In their amended complaint, plaintiffs sweepingly allege that the Administration has failed in its duties to implement the "avowed intent and purposes of the Farm Credit Act."

In support of their motion to dismiss, the federal defendants principally rely upon their belief that plaintiffs lack standing to pursue their claims against them. The federal defendants assert that plaintiffs have failed to allege a "case or controversy" with respect to any action by the federal defendants which would satisfy the requirements of Article III of the United States Constitution. Specifically, the federal defendants argue that plaintiffs have "...alleged no wrongdoing which could have been committed by the Federal Defendants, nor is the type of relief they seek available from the Federal Defendants."

In response to the federal defendants' well-reasoned and persuasive argument that plaintiffs lack standing, plaintiffs argue, and allege in their amended complaint, that they are merely seeking judicial review of the Administration's actions pursuant to the Administrative Procedures Act ("APA"), 5 U.S.C. § 701 *et seq.* The APA provides, in relevant part:

> A person suffering legal wrong because agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof....

5 U.S.C. § 702. In order to state a cause of action under the APA, and specifically § 702, for review of some agency action, a complainant must allege the existence of three factors: 1) agency action; 2) by which they aggrieved; and 3) within the meaning of relevant federal statute. *Association of Data Processing Service Organizations, Inc. v. Camp,* 397 U.S. 150, 153-54 (1970). The federal defendants, notwithstanding plaintiffs' reliance upon the APA, still assert that plaintiffs lack standing to maintain their claim with respect to the federal defendants' performance of their duties and responsibilities under the Farm Credit Act.

Because plaintiffs' amended complaint is so general, the Court's analysis of the standing issue is, to say the least, difficult. In the amended complaint, as noted earlier, plaintiffs essentially allege that the entire Farm Credit System, as operated by the defendants, has failed, and is failing, to function in a manner contemplated by the Farm Credit Act. Plaintiffs, however, fail to allege in what manner the System is malfunctioning. Plaintiffs make sweeping generalizations that the intent and purposes of the Farm Credit Act are being ignored, that the defendants have "abused and misused" certain statutory powers and that the defendants have passed rules and regulations which "are consistent with the Farm Credit Act." Under these circumstances, the Court can only conclude that plaintiffs have failed to allege facts which show that they have been aggrieved by any action of the Administration within the meaning of a relevant federal statute.

In *Kuhl v. Hampton,* 451 F.2d 340 (8th Cir. 1971), the Eighth Circuit stated:

> The federal courts are courts of limited jurisdiction created to adjudicate legal causes within their jurisdiction and were not established to mediate any and all types of complaints and alleged wrongs; and they certainly were not established to operate the administrative agencies of government.

Id. at 342. It is apparent to this Court that plaintiffs seek to substitute the Court for the Administration as the supervisory body under the Farm Credit Act. The Court does not believe that it is the appropriate entity to operate the Farm Credit System.

In their September 21, 1984 reply memorandum, the federal defendants state:

> The [plaintiffs] are seeking to have this Court perform the function of a congressional oversight committee. The Plaintiffs have failed to satisfy the constitutional, jurisdictional and procedural requirements that are prerequisite to seeking judicial redress. If there is a proper forum for the Plaintiff's grievances, it is before the Congress and not before the courts.

The Court finds the federal defendants' observation to be a reasonable summary of how this action should be viewed. An all-out assault on the operation of the Farm Credit System should not be waged in the courts, but at the congressional level. Many of the complaints plaintiffs have

against the defendants involve duties and responsibilities for which the Farm Credit Act, and, therefore, Congress, have specifically provided. This is particularly true with respect to plaintiffs' grievances against the requirement that they purchase stock in the institutions from which they secure credit. *See* 12 U.S.C. §§ 2013, 2034, 2073, 2094. Further, many of the acts of the Administration of which plaintiffs apparently complained were authorized by the broad discretionary powers granted by the Farm Credit Act. This Court may not review such acts even if it believed review were justified. In *Ponca City Production Credit Association v. United States,* 275 F. Supp. 502 (W.D. Ok. 19657), the Court observed:

> This Court is without authority under a declaration of policy announced by Congress to exercise a discretionary power vested thereunder in the Governor of the Farm Credit Administration....To do so would in effect, place the Court in the position of legislating or administering....

Id. at 506. This is especially true with respect to plaintiffs' claims under 12 U.S.C. §§ 2243 and 2522.

A final matter which the Court must address is plaintiffs' allegation that the federal defendants have failed to exercise their remedial powers granted under the TILA. Section 1607 (a)(6) does provide that the Administration shall enforce the provisions of the TILA as they apply to the lending institutions governed by the Farm Credit Act. However, this Court is without power to require the Administration to act under § 1607 (a)(6). *Pendleton v. Trans Union Systems Corp.,* 430 F. Supp. 95 (E.D. Pa. 1977).

CONCLUSION

As noted throughout this Opinion, plaintiffs seek, through this action, a full-scale review of the manner in which the Farm Credit System is being operated. They appear to find fault with the very essence of the System as it currently functions. Such a broad review of a statutory scheme developed by Congress, and in large part, operated according to the prescriptions of Congress, is not appropriately undertaken by the Courts. Therefore, this Court must dismiss this action in its entirety. The Court has specifically found that plaintiffs have failed to state a cause of action under the Farm Credit Act against the nonfederal defendants because the Act does not provide a private right of action, either express or implied. Further, the Court determined that plaintiffs failed to allege sufficient facts involving the nonfederal defendants in order for the Court to decide that a cause of action under the TILA was stated. The Court also determined that plaintiffs lacked standing to have their complaints against the federal defendants, specifically, and the Farm Credit System, generally, adjudicated by this Court under the APA. Finally because there remain no federal causes of action to be heard, the Court determines that it will not exercise its pendent jurisdiction in order to hear plaintiffs' state claims. *United Mine Workers v. Gibbs, supra.*

WHEREUPON, upon consideration and being duly advised, the Court determines the motions to dismiss of the nonfederal defendants and the federal defendants to be meritorious and they are, therefore, GRANTED. This action is hereby DISMISSED in its entirety.

IT IS SO ORDERED.

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION

George W. Bowling, et. al.,
Plaintiffs,

vs. Case No. C-2-84-0135
Judge Kinneary

John R. Block, Secretary, United States Dept. of Agriculture, *et. al.,*
Defendants.

Amended Class Action Complaint With Request For Injuctive Relief And Jury Demand

Preliminary Statement

1. This is an action by Plaintiffs, as both debtors and shareholders of Defendants, Columbus Production Credit Association, Federal Land Bank Association of Columbus, The Federal Intermediate Credit Bank of Louisville, The Federal Land Bank of Louisville, and the Fourth Farm Credit District Board, seeking damages and injunctive relief for the following causes: Violations of the Farm Credit Act; Breach of Contract; Breach of Fiduciary Duties; Unlawful retention of profits from shareholders; Violations of the Truth-in-Lending Act. Further, Plaintiffs seek injuctive relief to require the following Defendants to act in accordance with the Farm Credit Act in administrating the Farm Credit System: The Secretary of the United States Department of Agriculture; The Governor of the Farm Credit Administration; The Farm Credit Administration; The Federal Farm Credit Board. Plaintiffs

seek certification os their causes as a Class Action of all American farmers and ranchers with similar causes and claims.

Federal Jurisdiction

2. Certain causes set forth herein arise under the laws of the United States and this Court has jurisdiction to entertain this action pursuant to 28 U.S.C. §1331.

3. Further, Plaintiffs seek relief against certain agencies of the United States for failure to act in accordance with the Farm Credit Act and this Court has jurisdiction pursuant to 28 U.S.C. §§1346 and 1361.

4. Plaintiffs seek to have this Court review the actions of a governmental agency and this Court has jurisdiction pursuant to the Administrative Procedure Act, 5 U.S.C. §701, *et seq.*

5. Plaintiffs further allege violations of 12 U.S.C. §§2001, *et seq.* Plaintiffs further allege violations of Truth-in-Lending Act, 15 U.S.C. §1640 and the regulations and interpretations thereunder; 15 U.S.C. §1607 (a)(6); and §130(e), Statutory Appendix to Consumer Credit Protection Act, as amended.

6. Plaintiffs further seek certification of their causes as a Class Action pursuant to Rule 23, Federal Rules of Civil Procedure.

7. To the extent that Plaintiffs have alleged any other claims under Federal Law, this Court possesses pendent jurisdiction over the common or State law claims, as well as the causes against other Defendants, in furtherance of, in connection with, or related to the Federal Law Claims hereinafter alleged.

Venue

8. Pursuant to 28 U.S.C. §1391(c) and 28 U.S.C. §1346(a)(2), venue is proper in the Southern District of Ohio, Eastern Division because the credit transaction which are the subject of this lawsuit occurred in this judicial district, *inter alia*. Furthermore, certain Defendant Corporations have offices headquartered in this judicial district. Furthermore, all Plaintiffs reside in this judicial district.

Parties

9. Plaintiffs represent American farmers and farming corporations with farms at various locations throughout these United States.

10. Plaintiffs, George W. Bowling, Geodot, Inc., and George Bowling Quality Meats, Inc., have entered various credit transactions with Defendant, Federal Land Bank, for agricultural purposes. Further, Plaintiff, Dale Bower, has entered a consumer credit transaction with Defendant, Federal Land Bank. Further, Plaintiff, Richard Dailey, has entered credit transactions for agriculture purposes as well as certain consumer credit transactions with Defendant, Production Credit Association.

11. Defendants together form a nationwide and federally governed system of credit pursuant to 12 U.S.C. §2001, *et seq.*

* * *

Factual Allegations

34. Plaintiffs are members of a Class who have, over the course of several years each individually borrowed monies from Defendants, for purposes of purchasing land and farm equipment and other agricultural purposes and non-agricultural purposes.

35. Security for repayment of the borrowed funds was provided by execution of promissory notes secured by either mortgages upon real estate owned by Plaintiffs or by security agreements and financing statements aliening Plaintiffs' personal property, crops and equipment. Copies of the promissory notes, mortgages and security agreements are not attached hereto as required by Rule 10, Federal Rules of Civil Procedure, because all documents, even if available, would be too numerous, cumbersomeand burdensome to provide at this time. All such documents will be provided at a future date or upon Order of Court.

36. As further consideration and condition of Plaintiffs' borrowed funds, Defendants required Plaintiffs to purchase "stock" in the respective farm lending institutions.

37. Plaintiffs are shareholders of Defendants.

38. Plaintiffs have substantially complied with their duties and obligations as shareholders.

39. Defendants have consistently committed malfeasance, misfeasance and nonfeasance of their respective duties flowing from the following: the organizations as cooperatives; those duties under the Farm Credit Act; the Truth-in-Lending Act; the unique obligations created by the relationships of shareholder/director and borrower/lender; the implicit contractual obligations and fiduciary duties all of which will be more fully set forth hereinabove.

COUNT I

Violation of the Farm Credit Act.

40. Plaintiffs reallege and incorporate by reference each and every allegation set forth in paragraphs 1 through 39 as if fully rewritten herein.

41. The Farm Credit Act sets forth an extensive Federally supervised credit system designed specifically to provide credit services to agriculture and farmers and to be managed, controlled and owned by farmers pursuant to 12 U.S.C. §2001.

42. The Farm Credit System is to operate as a cooperative of farmers/ranchers pursuant to 12 U.S.C. §2001.

43. The Farm Credit Act is implemented through the Farm Credit System.

44. The avowed purposes of the Farm Credit System are set forth in 12 U.S.C. §2001, which provides, in part, as follows:

§2001. *Congressional declaration of policy and objectives.*

(a) It is declared to be the policy of Congress, recognizing that a prosperous, productive agriculture is essential to a free nation and recognizing the growing need for credit in rural areas, that the farmer-owned cooperative Farm Credit System be designed to accomplish the objective of improving the income and well-being of American farmers and ranchers by furnishing sound, adequate, and constructive credit and closely related services to them, their cooperatives, and to selected farm-related businesses necessary for efficient farm operations.

(b) It is the objective of this chapter to continue to encourage farmers and rancher-borrowers' to participate in the management, control, and ownership of a permanent system of credit for agriculture which will be a responsive to the credit needs of all types of agriculture producers having a basis for credit...

45. Defendants have failed to satisfy the requisites in the operation of a cooperative.

46. Defendants have ignored and acted in direct contra-distinction to the avowed intent and purposes of the Farm Credit Act.

47. Defendants have unlawfully, wrongfuly, and intentionally usurped powers not granted by the Farm Credit Act and abused and misused powers granted by the Farm Credit Act.

48. In addition to the foregoing general allegations, Defendants have specifically violated 12 U.S.C. §2252 by failing to make annual reports to Congress on the condition of the Farm Credit System and its institutions fully setting forth the manner and extent to which the purposes and objective of Chaper 23 have been carried out.

49. Further, Defendants have specifically violated 12 U.S.C. §§2012, 2033, 2072, 2093, 2243 and 2252 by prescribing and approving by-laws and regulations that are not consistent with the Farm Credit Act.

50. Defendants have violated 12 U.S.C. §§2015 and 2096, which require the Federal Land Banks and Production Credit Associations to provide credit to shareholder/borrowers at "lowest reasonable costs".

51. Defendants have violated 12 U.S.C. §§2013, 2055, 2052, 2073, 2077, 2078, 2095 and 2096 by failing to distribute profits to shareholders. Distribution of profits would establish compliance with 12 U.S.C. §§205 and 2096 by providing shareholders/borrowers with credit at lowest reasonable costs.

52. Defendants have specifically violated 12 U.S.C. §§2033, 2093 and 2252, by establishing regulations and by-laws granting powers to the Federal Land Banks, the Federal Intermediate Credit Banks and the Governor to remove and replace a Director or Chief Executive Officer

of the constituent associations which powers are in excess of those granted by the Farm Credit Act of 1971, 12 U.S.C. §2001, and contrary to its purposes.

53. Defendants have violated 12 U.S.C. §2034 by creating regulations and by-laws which do not permit shareholders authority to decide questions at meetings of stockholders.

54. As a direct and proximate result of all of the foregoing, the Farm Credit System does not operate to provide all benefits intended by the legislation and is not responsive to the credit needs of Plaintiffs and Plaintiffs have suffered corresponding substantial injury and damages.

COUNT II

Administrative Procedure Act

55. Plaintiffs reallege and incorporate by reference each and every allegation set forth in paragrphs 1 through 54 as if fully rewritten herein.

56. In addition to the foregoing violations, the following provisions have been violated 12 U.S.C. §§2051, 2052, 2073, 2077, 2094, 2095 and 2243 by the Federal Farm Credit Board and the Federal Farm Administration, by failing to approve payment of dividends and excess profits to shareholders.

57. Further, as set forth more particularly in Count VII hereinbelow, Defendant, Farm Credit Administra-

tion, has violated 15 U.S.C. §1607 (a)(6) by failing to enforce the Truth-in-Lending Act.

58. This Cause seeks this Court's review of the foregoing agency actions pursuant to the Administrative Procedure Act, 5 U.S.C. §§701, *et seq.*, 28 U.S.C. §1331, and review of officer action under 28 U.S.C. §1361.

59. As a direct and proximate cause of all of the foregoing, Plaintiffs have corresponding damages and request injunctive relief mandating compliance with the foregoing sections.

* * *

WHEREFORE, Plaintiffs pray, in their own behalf and as representatives of all members of their respective Classes, this Court enter Judgement against Defendants, as follows:

i. Plaintiffs and the groups they represent be certified so this action may proceed upon the merits as a Class Action;

ii. Preliminary and permanent injunction enjoining Defendants from violating the Farm Credit Act and further enjoining farm foreclosures until all matters set forth herein have been determined;

iii. Finding Defendant has breached the original contracts by attempting to charge higher interest rates than provided in the original notes and mortgages and awarding

damages for this breach in the amount of Three Million Dollars ($3,000,000,00);

iv. Damages to any member of Plaintiffs' Class in the amount of any monies paid in interest over and above the interest rates provided in the original notes and mortgages, which amount is not ascertainable as of the filing of this action;

v. Ordering Defendants distribute excess surplus and reserves for losses to Plaintiffs in the amount of Six Billion Dollars ($6,000,000,000.00).

vi. Awarding Plaintiffs actual and punitive damages as provided for violation of Regulation Z; of the Board of Governors of the Federal Reserve System, (12 C.F.R. §226) as set forth therein, same being as follows: 1) Individuals receive the lesser of either double the amount of interest paid by Plaintiffs or One thousand dollars ($1,000.00; 2) The Class receives the lesser of one and one-half (1½) percent of the total net worth of the lending institution of Five hundred thousand dollars ($500,000.00);

vii. Awarding Plaintiffs their costs and attorneys' fees incurred in the prosecution of this action;

viii. Such other relief at law or equity ad this Honorable Court may deem necessary and proper.

By:
Stephen E. Carter Gary R. Dumm
Attorneys for Plaintiffs
P.O. Box 211 Circleville, Ohio 43113
(614) 477-2593

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOVLED

UNITED STATES CONSITUTION, ARTICLE III, SECTION II:

"The judicial Power shall extend to all cases in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their authority; - to all Cases affecting Ambassadors, other public Ministers and Counsel; - to all Cases of admiralty and meritime Jurisdiction; - to ontroversies to which the United States shall be a Party; - to controversies between two (2) or more States; - between a State and Citizens of another State; - between Citizens of different States; - between Citizens of the same State claiming lands under"

Grants of different States, and between a State, or the Citizens thereof, and foreign States, Citizens, or Subjects. In all Cases affecting Ambassadors, other public Ministers and Counsels, and those in which a State shall be Party, the Supreme Court shall have original jurisdiction. In all the other Court cases before mentioned, the Supreme Court shall have appellate Jurisdiction, both as to Law and Fact, with such Exceptions, and under such Regulations as the Congress shall make.

12 U.S.C. § 2001:
Congregional Declaration of Policy and Objections

(a) It is declared to be the policy of Congress, recognizing that a prosperous, productive agriculture is essential to a free nation and recognizing the growing need for credit in rural areas, that the farmer-owned cooperative Farm Credit System be designed to accomplish the objective of improving the income and well-being of the American farmers and ranchers by furnishing sound, adequate, and constructive credit and closely related services to them, their cooperatives, and to selected farm-related businesses necessary for efficient farm operations.

(b) It is the objective of this Chapter to continue to encourage farmer and rancher-borrowers participation in the management, control and ownership of a permanent system of credit for agriculture which will be responsive to the credit needs of all types of agricultural producers having a basis for credit.

* * *

12 U.S.C. § 2012:
Corporate Existence; General Corporate Powers

Each Federal Land Bank shall be a body corporate, and subject to supervision by the Farm Credit Administration, shall have power to -

* * *

(9) Prescribe by its board of directors its bylaws not inconsistent with law provided for the classes of its stock and

the manner in which its stock shall be issued, transferred, and retired; its officers, employees, and agents are elected or provided for; its property acquired, held, and transferred; its loans and appraisals made; its general business conducted; and the privileges granted it by law exercised and enjoyed.

§ 2013:

Land bank stock

* * *

(e) Dividends. Dividends shall not be payable on any stock held by the Governor of the Farm Credit Administration. Non-cumulative dividends may be payable on other stock and participation certificates of the bank. The rate of dividends may be different between different classes and issues of stock and participation certificates on the basis of the comparative contributions of the holders thereof to the capital or earnings of the bank by such classes and issues, but otherwise dividends shall be without preference.

(f) Patronage refunds. Patronage refunds may be paid in nonvoting stock, participation certificates, allocated surplus, and other equities of the bank, or cash, or in both equities and cash, as determined by the board of the bank, to borrowers of the fiscal year for which such patronage refunds are distributed. All patronage refunds shall be paid in the proportion that the amount of interest on the loans to each borrower during the year bears to the interest on the loans of all borrowers during the year or on usch other proportionate patronage basis as the Farm Credit Administration may approve.

* * *

§ 2015:

Interest rates and other charges

Loans made by a Federal land bank shall bear interest at a rate or rates, and on such terms and conditions, as may be determined by the board of directors of the bank from time to time, with the approval of the Farm Credit Administration as provided in section 4.17 of this Act [12 USCS½205]. In setting rates and charges, it shall be the objective to provide the types of credit needed by eligible borrowers at the lowest reasonable costs on a sound business basis taking into account the cost of money to the bank, necessary reserve and expenses of the banks and Federal land bank associations, and providing services to stockholders and members. The loan documents may provide for the interest rate or rates to vary from time to time during the repayment period of the loan, in accordance with the rate or rates currently being charged by the bank.

* * *

12 U.S.C. § 2033:

GENERAL CORPORATE POWERS

Each Federal land bank association shall be a body corporate and, subject to supervision of the Federal land bank for the district and of the Farm Credit Administration, shall have the power to -

* * *

(8) Prescribe by its board of directors, its bylaws, not inconsistent with law, providin for the classes of its stock and the manner in which its stock shall be issued, transfer

red, and retired; its officers and employees elected or provided for; its property acquired, held, and transferred; its general business conducted; and privileges granted it by law exercised and enjoyed.

* * *

§ 2051:
Land bank reserves; dividends and patronage refunds

* * *

(b)Any bank may declare a dividend or dividends, and pay patronage refunds, or do any of them, as provided in its bylaws out of the whole or any part of net earnings which remain after (1) the maintenance of the reserve as required in subsection (a) hereof, (2) the payment of the franchise tax as required by section 4.0 [12 USCS § 2151] for any year in which any stock in the bank is held by the Governor of the Farm Credit Administration, and (3) the approval of the Farm Credit Administration.

* * *

12 U.S.C. § 2072:
Corporate Existence; General Corporate Powers;

Each Federal intermediate credit bank shall be a body corporate and , subject to supervision of the Farm Credit Administration, shall have power to -

* * *

(9) Prescribe by its board of directors its bylaws not inconsistent with law providing for the classes of its stock and them manner in which its stock shall be issued, transferred, and retired; its officers, employees, and agents elected or provided for; its property acquired, held, and transferred; its loans and discounts made; its general business conducted and the privileges granted it by law exercised and enjoyed.

* * *

§ 2073:

Federal intermediate credit bank stock

(f) Dividends. Dividends shall not be payable on any stock held by the Governor of the Farm Credit Administration other than the tax imposed by section 4.0(c) [12 USCS SECTION 2151(c)] but noncumulative dividends may be payable on oher capital and participation certificates in an amount not to exceed a per centum permitted under regulations of the Farm Credit Administration, in any year as determined by the board of directors. Such dividends may be in the form of stock and participation certificates or, when the Governor of the Farm Credit Administration holds no stock in the bank, in cash. The rate of dividends may be different between different classes and issues of stock and participation certificates on the basis of the comparative contributions of the holders thereof to the capital or earnings of the bank by such classes and issues, but otherwise dividends shall be without preference.

* * *

§ 2077:

Net earnings

(a) Determination; annual application; surplus account; absorption of net loss. If, at the end of a fiscal year a Federal intermediate credit bank shall have stock outstanding held by the Governor of the Farm Credit Administration, such bank shall determine the amount of its net earnings after paying or providing for alloperating expenses (including reasonable valuation reserves and losses in excess of any such applicable reserves) and shall apply such net earnings as follows: (1) to the restoration of the impairment, if any, of capital stock and participation certificates, as determined by its board of directors; (2) to the restoration of the amount of impairment, if any, of the surplus account or allocation reserve account established by this subsection, as determined by its board of directors; (3) 25 per centum of any remaining net eanings shall be used to create and maintain all allocated reserve account; (4) a franchise tax shall be paid to the United States, as provided in section 4.0 of this Act [12 USCS § 2151]; (5) reasonable unallocated contingency reserve account may be established and maintained; (6) dividends on stock held by production credit associations and on participation certiciates may be declared as provided in section 2.2(f) of this title [12 USCS § 2073(f)]; and (7) any remaining net earnings shall be distributed as patronage refunds as provided in subsection (b) of this section.

Amounts applied to reserve account as provided in (3) above, either heretofore or hereafter, shall be allocated on the same patronage basis and havae the same tax treatment as is provided in subsection (b) of this section for patronage refunds. At the end of any fiscal year that the

allocated reserve account of any bank exceeds 25 per centum of its outstanding stock and participation certificates, such excess may be distributed, oldest allocations first, in stock to production credit associations and participation certificates issued as of the date of the allocations.

If and when the relative amounts of stock in a Federal intermediate credit bank owned by the production credit associations are adjusted to reestablish the proportion of such stock owned by each association, as provided in the first or second paragraphs of section 2.2(g) of this title [12 USCS § 2073(g)], amounts in the reserve account that are allocated to production credit associations may be adjusted in the same manner, so far as practicable, to reestablish the holdings of the production credit associations in the allocated legal reserved accounts into substantially the same proportion as are their holdings of stock.

No part of the surplus account established by a Federal intermediate credit bank on January 1, 1957, consisting of its earned surplus account, its reserve for contingencies, and the surplus of the production credit corporation transferred to the bank, shall be distributed as patronage refunds or as dividends. In the event of a net loss in any fiscal year after providing for all operating expenses (including reasonable valuation reserves and losses in excess of any such aplicable reserves), such loss shall be absorbed by: first, charges to the unallocated reserve account; second, impairment of the allocated reserve account; third, impairment of the surplus other than that transferred from the production credit corporation of the district; fourth, impairment of surplus transferred from the production credit corporation of the district; fifth, impair-

ment of stock and participation certificates held by production credit associations and participation certificates held by other financing institutions; and sixth, impairment of nonvoting stock.

(b) Patronage refunds when bank outstanding capital stock held by the Govenor. If at the end of a fiscal year a Federal intermediate credit bank shall have outstanding capital stock held by the Governor of the Farm Credit Administration, patronage refunds declared for that year shall be paid in stock to production credit associations and in participation certificates to other financing institutions borrowing from or discounting with the bank during the fiscal year for which such refunds are declared. The recipients of such patronage refunds shall not be subject to Federal income taces thereon. All patronage refunds shall be paid in the proportion that the amount of interest earned by the bank on its loans to and discounts for each production credit association or other financing institution bears to the total interest earned by the bank on all such loans and discounts outstanding during the fiscal year. Each participation certificate issued in payment of patronage refunds shall be in multiples of $5 and shall state on its face the rights, privileges, and conditions applicable thereto. Patronage refunds shall not be paid to any other Federal intermediate credit bank, or to any Federal land bank or bank for cooperatives.

(c) Patronage refunds when bank has no outstanding capital stock held by the Govenor. If, at the end of a fiscal year a Federal intermediate credit bank shall have no outstanding capital stock held by the Governor of the Farm Credit Administration, the net earnings of such bank shall, under regulations prescribed by the Farm Credit Administration, continue to be distributed on a

cooperative basis with an obligation to distribute patronage dividends and with provision for sound, adequate capitalization to meet changing financing needs of production crdit associations, other financial institutions eligible to discount paper with the bank, and other eligible borrowers, and prudent corporate fiscal management, to the end that the current year's patrons carry their fair share of the capitalization, ultimate expenses, and reserves. Such regulations may provide for the application of net earnings after payment of operating expenses to the restoration or maintenance of the allocated reserve account, additions to unallocated contingency reserve account of not to exceed such per centum of net earnings as may be approved by the Farm Credit Administration, and provide for alocations to patrons not qualified under the Int .nal Revenue Code [26 USCS §§ 1 et seq.], and the payment of patronage in stock, participation certificates, or in cash, as the board may determine. If during the fiscal year but not at the end thereof a bank shall have had outstanding capital stock held by the Governor of the Farm Credit Administration, provision will be made for the payment of the franchise tax required in section 4.0 [12 USCS § 2151].

(d) Lien on allocation of reserve account. Such allocations of reserve account shall be subject to a first lien as additional collateral for any indebtedness of the holders thereof to the bank and in any case where such indebtedness is in default may, but shall not be required to, be retired and canceled for application on such indebtedness, and, in case of liquidation or dissolution of a holder thereof, such reserve account allocations may be retired, all as is provided for stock and participation certificates in section 2.2(g) of this title [12 USCS §2073(g)].

* * *

§ 2078:

Distribution of assets on liquidation

In the case of liquidation or dissolution of any Federal intermediate credit bank, after payment or retirement, as the case may be, first, of all liabilities; second, of all stock held by the Governor of the Farm Credit Administration at par; third, of all stock owned by production credit associations at par and all participation certificates at face amount; any remaining assets of the bank shall be distributed as provided in this subsection. Any of the surplus established pursuant to section 2.6 [12 USCS §2077] (excluding that transferred from the production credit corporation of the district) which the Farm Credit Administration determines was contributed by financing institutions other than the production credit associations discounting with or borrowing from the bank on January 1, 1957, shall be paid to such institutions, or their successors in interest as determined by Farm Credit Administration, and the remaining portion of such surplus (including that transferred from the production credit corporation of the district) shall be paid to the holders of voting and nonvoting stock pro rata. The contribution of each such financing institution under the preceding sentence shall be computed on the basis of the ratio of its patronage to the total patronage of the bank from the date of organization of the bank to January 1, 1957. The allocated reserve established pursuant to section 2.6 [12 USCS § 2077] shall be paid to the production credit associations and other financing institutions to which such reserve is allocated on the books of the bank. Any assets of the bank then remaining shall be distributed to the production credit associations and the holders of participation certificates pro rata.

12 U.S.C. § 2093:

General Corporate Powers:

Each production credit association shall be a body corporate and, subject to supervision by the Federal intermediate credit bank for the district and the Farm Credit Administration, shall have to -

(16) Prescribe by its board of directors its by laws not inconsistant with law providing for the classes of its stock and the manner in which its stock shall be issued, transferred and retired, its officers and employees elected or provided for, its property acquired, held and transferred, its general business conducted, and the privileges granted it by law exercised and enjoyed.

§ 2094

Stock and participation certificates

* * *

(i) Payment of dividends. Dividends shall be paid on preferred stock in accordance with the authorization of the stockhholders to issue each stock. Dividends on stock, other than preferred stock, and on participation certificates may be paid by an association as provided in its bylaws at such rate or rates as are approved by the Federal intermediate credit bank in accordance with regulations of the Farm Credit Administration, and may be paid, upon such approval, even though the amount in the surplus accounts is less than the minimum aggregate amount prescribed by the bank provided in section 2.14 [12 USCS §2095].

* * *

* * *

§ 2095 Application of earnings; restoration of capital impairment; surplus account

(a) Each production credit association at the end of each fiscal year shall apply the amount of its earnings for such year in excess of its operating expenses (including provision for valuation reserves against loan assets in an amount equal to one-half of 1 per centum of the loans outstanding at the end of the fiscal year to the extent that earnings in such year in excess of other operating expenses permit, until such reserves equal or exceed 3½ per centum of the loans outstanding at the end of the fiscal year, beyond which 3½ per centum further additions to such reserves are not required but may be made) first to the restoration of the impairment, if any, of capital and second, to the establishment and maintenance of the surplus accounts, the minimum aggregate amount of which shall be prescribed by the Federal intermediate credit bank.

(b) When the bylaws of an asociation so provide, available net earnings at the end of any fiscal year may be distributed on a patronage basis in stock, participation certificates, or in cash, except that when the Governor holds any stock in an association the cash distribution shall be such percentage of the patronage refund as shall determined under regulations of the Farm Credit Administration. Any part of the earnings of the fiscal year in excess of the operating expenses for such year held in the surplus account may be allocated to patrons on a patronage basis.

12 U.S.C. § 2227:
Powers of District Farm Credit Board:

(a) Each farm credit district board shall have power to -

* * *

(2) provide rules and regulations, governing the banks and associations in the district, not inconsistent with law.

* * *

§ 2243:

Powers of the Federal Farm Credit Board

The Federal Farm Credit Board shall extablished the general policy for the guidence of the Farm Credit Administration and approve the necessary rules and regulations for the implementation of this Act not inconsistent with its provisions; may require such reports as it deems necessary from the institutions of the Farm Credit System;

§ 2252:

Powers and duties

(a) Enumerated powers. The Farm Credit Administration shall have the following powers, functions, and responsibilities in connection with the institutions of the Farm Credit System and the administration of this Act:

* * *

(2) Where necessary or appropriate to carry out the policy and objectives of this Act, issue and amend or modify Federal charters or the bylaws of institutions of the System; approve change in names of banks operating under this Act; approve the merger of districts when agreed to by the boards of the districts involved and by a

levels to be used in such standards, appraisals, and lending; supplement the work of the district under the foregoing where necessary to accomplish the purposes of this Act.

* * *

(16) Prescribe rules and regulations necessary or appropriate for carrying out the provisions of this Act.

(17) Exercise such incidental powers as may be necessary or appropriate to fulfill its duties and carry out the purposes of this Act.

* * *

* * *

5 U.S.C. § 702:
RIGHT OF REVIEW:

A person suffering legal wrong because of agency action, or adversely affected or aggrieved by agency action within the meaning of a relevant statute, is entitled to judicial review thereof. An action in a Court of the United States seeking relief other than money damages and stating a claim that an agency or an officer or employee thereof acted or failed to act in an official capacity or under color of legal authority shall not be dismissed nor relief therein be denied on the ground that it is against the United States or that the United States is an indispensable party. The United States may be named as a defendant in any such action, and a judgment or decree may be entered against the United States: Provided, That any mandatory or injuctive decree shall specify the Federal officer or officers (by

(D) without observance of procedure required by law;

(E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed onthe record of an agency hearing provided by statute; or

(F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

name or by title), and their successors in officer, personally responsible for compliance. Nothing herein (1) affects other limitations on judicial review or the power or duty of the Court to dismiss any action or deny relief on any other appropriate legal or equitable ground; or (2) confers authority to grant relief if any other statute that grants consent to suit expressly or impliedly forbids the relief which is sought.

§706:

Scope of Review

To the extent necessary to decision and when presented, the reviewing court shall decide all relevant questions of law, interpret consitutional and statutory provisions, and determine the meaning or applicability of the terms of an agency action. The reviewing court shall--

(1) compel agency action unlawfully withheld or unreasonably delayed; and

(2) hold unlawful and set aside agency action, findings, and conclusions found to be —

(A) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;

(B) contrary to constitutional right, power, privilege, or immunity;

(C) in excess of statutory jurisdiction, authority, or limitations, or short of statutory right;

(D) without observance of procedure required by law;

(E) unsupported by substantial evidence in a case subject to sections 556 and 557 of this title or otherwise reviewed onthe record of an agency hearing provided by statute; or

(F) unwarranted by the facts to the extent that the facts are subject to trial de novo by the reviewing court.

In making the foregoing determinations, the court shall review the whole record or those parts of it cited by a party, and due account shall be taken of the rule of prejudicial error.

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No. 85-2158

SUPREME COURT OF THE UNITED STATES

October Term, 1985

DALE BOWER AND RICHARD DAILEY
Petitioners
v.

RICHARD E. LYNG, et al.,
Respondents

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

RESPONDENTS' BRIEF IN OPPOSITION

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RESPONDENTS' BRIEF IN OPPOSITION

PRELIMINARY STATEMENT

Respondents[1] are satisfied with Petitioners' statement of the questions presented for review, list of parties to the proceeding, citation of the lower courts' opinions, jurisdictional statement, citation of applicable statutory provisions and statement of the case.

This brief is filed on behalf of the Fourth District defendants which include: The Federal Land Bank of Louisville; Federal Land Bank Association of Columbus; The Federal Intermediate Credit Bank of Louisville; Columbus Production Credit

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1. As required by Rule 28.1, Rules of the Supreme Court of the United States, all parent corporations, subsidiaries, and affiliates of each Fourth District corporate defendant are as follows: The Federal Land Bank of Louisville; Federal Land Bank Association of Columbus; The Federal Intermediate Credit Bank of Louisville; Columbus Production Credit Association, and the Fourth Farm Credit District.

Association, the Fourth Farm Credit District, Robert P. Hester, Ray Moss Tucker, B. Dale Harrison, James A. Rose, Lee F. Moffett, Gary French, Robert M. Hendrix, Sr. Because the defendants were named only in Count 1 of the Petitioners' Complaint, these respondents do not address the claims under the Administrative Procedure Act which were alleged in Count 2 of the Petitioners' Complaint. The Fourth District defendants were named as defendants in Count 1 only and this brief is accordingly addressed only to the issue of whether the petitioners may maintain a federal private cause of action under the Farm Credit Act of 1971.

ARGUMENT: REASONS FOR DENYING THE WRIT

I. Introduction

Petitioners must affirmatively establish any special or important reason

why this Court should exercise its discretionary jurisdiction. Petitioners have failed to advance any such reason and there is no such reason for the Court to review this case. As demonstrated below, the lower federal courts have uniformly concluded that a private party has no private right of action under the Farm Credit Act. The decision of the lower court rests squarely on the holdings of this Court and does not present an issue sufficiently important to warrant this Court's attention.

II. The Courts Have Uniformly Held That The Farm Credit Act Does Not Provide A Private Right Of Action.

The lower federal courts have concluded uniformly that the Farm Credit Act does not afford a private right of action. To date, only two decisions have been rendered by courts of appeal and both circuits agree that the Farm Credit Act does not provide

for a private cause of action. The Sixth Circuit decision below in Bowling v. Block, 785 F.2d 556 (6th Cir. 1986) followed the precedent set by the Eleventh Circuit in Smith v. Russellville Production Credit Association, 777 F.2d 1544 (11th Cir. 1985).

In addition, the district courts have held uniformly that no private cause of action is afforded by the Farm Credit Act. See Bowling v. Block, 602 F. Supp. 667 (S.D. Ohio 1985), Apple v. Miami Valley Production Credit Association, 614 F. Supp. 119 (S.D. Ohio 1985), and Birbeck v. Southern New England Production Credit Association, 606 F. Supp. 1030 (D.C. Conn. 1985). A state court also has reached the identical conclusion in Johanasen v. Production Credit Association of Marshall-Ivanhoe, 378 N.W. 2d 59 (Minn. App. 1985).

There is not a single reported decision that is in conflict with the holding below that the Farm Credit Act does not provide for a private cause of action. Respectfully, it is unnecessary for the Court to exercise its jurisdiction in this case.

III. The Decisions Of The Sixth Circuit Court Of Appeals And The District Court Are Correct.

The petitioners concede that the Farm Credit Act does not explicitly provide a private cause of action. As demonstrated in the lower court opinions, the four-part analysis established by this Court in Cort v. Ash, 422 U.S. 66 (1975) compels the conclusion that the Farm Credit Act does not create an implied private right of action.

IV. Congress Has Recently Provided A Means Of Review Of The Farm Credit System, And The Recognition of a Private Right of Action May Interfere with Congress' Preferred Method for Analysis of the Farm Credit System.

Petitioners suggest that judicial review is the only means of assuring that the Farm Credit Act is fully implemented. To the contrary, after this case was initiated and the District Court dismissed the complaint on February 6, 1985, Congress enacted the Farm Credit Amendments Act of 1985 on December 23, 1985. The Act contains measures to address the very concerns raised by the Petitioners. Among other provisions, Congress created the National Commission on Agricultural Finance which provides a means of review to assure that the Farm Credit Act is fully implemented and properly administered. Pub. L. No. 99-205, Title V, §501, 99 Stat. 1710 (1985), quoted in 12 U.S.C. §2001,

note. This Commission has one year from the date of its creation (Dec. 23, 1985) to "evaluate the structure, performance, and conduct of private lenders - commercial bankers and the Farm Credit System. . ." Id. at Title V, §501(c)(2). If there is a need for broad ranging review of the Farm Credit System such as petitioners seem to seek, Congress has enabled such review to occur by its creation of the Commission.

Congress also provided limited rights for judicial review to specific parties including the Farm Credit Administration and directors or officers who have received an order of removal or notice of suspension. Pub. L. No. 99-205, §204, Part C, §§5.25-.30, 99 Stat. 1694 (1985). However, Congress did not create a cause of action for any other parties. This Congressional decision supports the lower courts conclusion that no private right of

action should be inferred and confirms that Congress did not wish to grant such rights of action.

CONCLUSION

For the reasons set forth herein, Respondents respectfully submit that the petition for a writ of certiorari should be denied.

Respectfully submitted,

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APPENDIX

The Farm Credit Amendments Act of 1985, Pub. L. No. 99-205, 99 Stat. 1678-1712 (1985) provides in pertinent part:

ENFORCEMENT POWERS

Sec. 204. Title V of the Farm Credit Act of 1971 is amended by inserting after section 5.24, as so redesignated by section 203(b), the following:

PART C - ENFORCEMENT POWERS OF FARM CREDIT ADMINISTRATION

"Sec. 5.25. Cease and Desist Proceedings.--(a) If, in the opinion of the Farm Credit Administration, any institution in the Farm Credit System, or any director, officer, employee, agent, or other person participating in the conduct of the affairs of such an institution is engaging or has engaged, or the Farm Credit Administration has reasonable cause to believe that the institution or any director, officer, employee, agent, or other person participating in the conduct of the affairs of such institution is about to engage, in an unsafe or unsound practice in

conducting the business of such institution, or is violating or has violated, or the Farm Credit Administration has reasonable cause to believe that the institution or any director officer, employee, agent, or other person participating in the conduct of the affairs of such institution is about to violate, a law, rule, or regulation, or any condition imposed in writing by the Farm Credit Administration in connection with the granting of any application or other request by the institution or any written agreement entered into with the Farm Credit Administration, the Farm Credit Administration may issue and serve upon the institution or such director, officer, employee, agent, or other person a notice of charges in respect thereof. The notice shall contain a statement of the facts constituting the alleged violation or violations or the unsafe or unsound practice or practices, and shall fix a time and place at which a hearing will be held to determine whether an order to case and desist therefrom should issue against the institution or the director, officer, employee, agent, or other person participating in the conduct of the affairs of such institution. Such hearing shall be fixed for a date not earlier than thirty days nor later than sixty days after service of such notice unless an earlier or a later date is set by

the Farm Credit Administration at the request of any party so served. Unless the party or parties so served shall appear at the hearing personally or by a duly authorized representative, they shall be deemed to have consented to the issuance of the cease and desist order. In the event of such consent, or if upon the record made at any such hearing, the Farm Credit Administration shall find that any violation or unsafe or unsound practice specified in the notice of charges has been established, the Farm Credit Administration may issue and serve upon the institution or the director, officer, employee, agent, or other person participating in the conduct of the affairs of such institution an order to cease and desist from any such violation or practice. Such order may, by provisions that may be mandatory or otherwise, require the institution or its directors, officers, employees, agents, and other persons participating in the conduct of the affairs of such institution to cease and desist from the same, and further, to take affirmative action to correct the conditions resulting from any such violation or practice.

(b) A cease and desist order shall become effective at the expiration of thirty days after the service of such order upon the institution or other person

concerned (except in the case of a cease and desist order issued upon consent, which shall become effective at the time specified therein), and shall remain effective and enforceable as provided therein except to such extent as it is stayed, modified, terminated, or set aside by action of the Farm Credit Administration or a reviewing court.

Sec. 5.26. TEMPORARY CEASE AND DESIST ORDERS.--(a) Whenever the Farm Credit Administration shall determine that the violation or threatened violation or the unsafe or unsound practice or practices, specified in the notice of charges served upon the institution or any director, officer, employee, agent, or other person participating in the conduct of the affairs of such institution under section 5.25, or the continuation thereof, is likely to cause insolvency or substantial dissipation of assets or earnings of the institution, or is likely to seriously weaken the condition of the institution or otherwise seriously prejudice the interests of the investors in Farm Credit System obligations or shareholders in the institution prior to the completion of the proceedings conducted under section 5.25, the Farm Credit Administration may issue a temporary order requiring the institution or such director, officer, employee, agent, or other person to cease and desist from

any such violation or practice and to take affirmative action to prevent such insolvency, dissipation, condition, or prejudice pending completion of such proceedings. Such order shall become effective upon service upon the institution or such director, officer, employee, agent, or other person participating in the conduct of the affairs of such institution and, unless set aside, limited, or suspended by a court in proceedings, authorized by subsection (b), shall remain effective and enforceable pending the completion of the administrative proceedings pursuant to such notice and until such time as the Farm Credit Administration shall dismiss the charges specified in such notice, or if a cease and desist order is issued against the institution or such director, officer, employee, agent, or other person, until effective date of such order.

(b) Within ten days after the institution concerned or any director, officer, employee, agent, or other person participating in the conduct of the affairs of such institution has been served with a temporary cease and desist order, the institution or such director, officer, employee, agent, or other person may apply to the United States district court for the judicial district in which the

home office of the institution is located or the United States district court for the District of Columbia, for an injunction setting aside, limiting, or suspending the enforcement, operation, or effectiveness of such other pending the completion of the administrative proceedings pursuant to the notice of charges served upon the institution or such director, officer, employee, agent, or other person under section 5.25, and such court shall have jurisdiction to issue such injunction.

Sec. 5.27. ENFORCEMENT OF TEMPORARY CEASE AND DESIST ORDERS.--In the case of violation or threatened violation of, or failure to obey, a temporary cease and desist order issued under section 5.26, the Farm Credit Administration may apply to the United States district court, or the United States court of any territory, within the jurisdiction of which the home office of the institution is located, for an injunction to enforce such order, and, if the court shall determine that there has been such violation or threatened violation or failure to obey, it shall be the duty of the court to issue such injunction.

TITLE V--NATIONAL COMMISSION ON AGRICULTURAL FINANCE

Sec. 501.(a) The President shall appoint a National Commission on

Agricultural Finance. Such Commission shall be comprised of 15 members, of whom 7 shall be appointed by the President and 4 each by the Speaker of the House of Representatives and the President pro tempore of the Senate. The Commission shall consist of representatives of the financial community, the agricultural sector, and government.

(b) The National Commission on Agricultural Finance shall conduct a study of methods to ensure the availability of adequate credit to agricultural producers and agribusiness, taking into account the long-term financing needs of the agricultural economy; the roles of the commercial banks, the Farm Credit System, and the Farmers Home Administration in meeting those financial needs.

(c) In conducting such study, the National Commission on Agricultural Finance shall--

(1) evaluate the financial circumstances relative to both lenders and borrowers of farm credit;

(2) evaluate the structure, performance, and conduct of private lenders-commercial bankers and the Farm Credit System-and public lenders;

(3) explore the need for long-term assistance in stabilizing the value of agricultural assets; and

(4) evaluate the effect on suppliers, producers, processors, and local communities when financial institutions fail.

(d) Not later than one year after the date of enactment of this Act, the Commission shall submit a report containing the results of the study required by this section, together with comments and recommendations for legislation providing for a sound, reasonable, and primarily self-supporting credit program for farmers and ranchers as the Commission considers appropriate, to Congress.

(e) The Commission shall be comprised of volunteers and no Federal funds shall be expended by the Commission.

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No. 85-2158

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OCTOBER TERM, 1986

DALE BOWER AND RICHARD DAILEY, PETITIONERS

v.

RICHARD E. LYNG, SECRETARY OF AGRICULTURE, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE FEDERAL RESPONDENTS IN OPPOSITION

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ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

MEMORANDUM FOR THE FEDERAL RESPONDENTS IN OPPOSITION

Petitioners are individuals who received credit from various private lending institutions that are members of the Farm Credit System. They challenge the court of appeals' holding that they lack standing to sue the federal respondents under the Administrative Procedure Act (APA), 5 U.S.C. (& Supp. III) 701 *et seq.*, for alleged violations of the Farm Credit Act.[1]

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[1]The federal respondents are the Secretary of Agriculture, the Farm Credit Administration, and the members and Chairman of the Farm Credit Administration Board. See Farm Credit Amendments Act of 1985, Pub. L. No. 99-205, § 201(1), 99 Stat. 1688, 1689, 12 U.S.C. (Supp. III) 2242, 2244 (replacing Federal Farm Credit Board with Farm Credit Administration Board, and replacing the Governor of the former with the Chairman of the latter); Sup. Ct. R. 40.

Petitioners also challenge (Pet. I) the court of appeals' holding they have no implied private right of action under the Farm Credit Act of 1971, 12 U.S.C. (& Supp. III) 2001 *et seq.*, a holding that resulted in

1. Congress established the Farm Credit System in 1971 in order to "improv[e] the income and well-being of American farmers and ranchers by furnishing sound, adequate, and constructive credit and closely related services" (12 U.S.C. 2001(a)). The System is composed of a variety of farmer-owned cooperative lending institutions, such as federal land banks, production credit associations, and banks for cooperatives (12 U.S.C. (Supp. III) 2002). The institutions that belong to the System are regulated and supervised by the Farm Credit Administration, an independent Executive Branch agency that is governed by the Farm Credit Administration Board and its Chairman. Farm Credit Amendments Act of 1985, Pub. L. No. 99-205, § 201(1), 99 Stat. 1688, 1689, 12 U.S.C. (Supp. III) 2241, 2243, 2244. The Administration is a regulatory agency and does not itself engage in any lending activities.

Petitioners brought this action in 1984 in the United States District Court for the Southern District of Ohio, naming as defendants the federal respondents and a number of Farm Credit System member institutions. Petitioners purported to represent a class of "American farmers * * * with farms at various locations throughout these United States" (Pet. App. A22, A23). With respect to the federal respondents, petitioners alleged numerous violations of the Farm Credit Act and sought review of those violations under the Administrative Procedure Act (*id.* at A24-A28). Petitioners alleged broadly that the "entire Farm Credit

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dismissal of their complaint against the nonfederal respondents. See Pet. App. A2-A3, A8-A14. Because this latter holding has no direct effect upon the federal respondents, we do not address it. As the nonfederal respondents have noted, however, and as petitioners appear to concede, there is no conflict among the circuits on that question. *Smith* v. *Russellville Prod. Credit Ass'n*, 777 F.2d 1544, 1546-48 (11th Cir. 1985) (no private right of action exists under the Farm Credit Act); Federal Land Bank of Louisville et al. Br. in Opp. 4-6.

System * * * has failed" and that the federal respondents had "ignored and acted in direct contra-distinction to the avowed intent and purposes of the * * * Act" (*id.* at A16, A25). Petitioners made "sweeping generalizations * * * that the defendants have 'abused and misused' certain statutory powers and that the defendants have passed rules and regulations which 'are [not] consistent with the Farm Credit Act' " (*id.* at A16; see *id.* at A25-A26). Although petitioners "fail[ed] to allege in what manner the System is malfunctioning" (*id.* at A16), they asserted that the Farm Credit System was not operating as intended and that they have "suffered corresponding substantial injury and damages" (*id.* at A27).

The federal respondents moved to dismiss for lack of standing, failure to state a claim, and failure to meet the requirements for APA review. The district court granted the motion. Noting that petitioners' "all-out assault on the operation of the Farm Credit System" essentially seeks "to substitute the Court for the Administration as the supervisory body under the Farm Credit Act" (Pet. App. A17), the court concluded that petitioners "lacked standing to have their complaints against the federal defendants, specifically, and the Farm Credit System, generally, adjudicated by th[e] Court under the APA" (*id.* at A19). The court of appeals affirmed in a per curiam decision, finding the district court's analysis of the standing issue "persuasive" and specifically adopting that analysis as its own (*id.* at A3).

2. The court of appeals' decision is in accord with settled law and creates no conflict among the circuits. There is no basis for further review.

It is axiomatic that a threshold requirement in every federal lawsuit, including cases brought under the APA, is that the plaintiffs have standing to sue. To satisfy this constitutional "case or controversy" requirement, the complaint must, at a minimum, "allege personal injury fairly

traceable to the defendant's allegedly unlawful conduct and likely to be redressed by the requested relief." *Allen* v. *Wright*, 468 U.S. 737, 751 (1984). See *Valley Forge Christian College* v. *Americans United for Separation of Church & State, Inc.*, 454 U.S. 464, 472 (1982); *Gladstone, Realtors* v. *Village of Bellwood*, 441 U.S. 91, 99 (1979). In particular, the complaint must state facts sufficient to show that the injury complained of is fairly traceable to the unlawful action alleged. *Simon* v. *Eastern Kentucky Welfare Rights Org.*, 426 U.S. 26, 41 (1976). When a suit challenges government action, moreover, the standing requirement ordinarily bars wholesale attacks on an agency's overall operations, demanding that the complaint refer to "specifically identifiable Government violations of law." *Allen* v. *Wright*, 468 U.S. 737, 759 (1984); see *id.* at 759-761. The Constitution does not contemplate that the federal courts should become "virtually continuing monitors of the wisdom and soundness of Executive action" by undertaking, as if they were congressional oversight committees, generalized reviews of agency operations. See *Laird* v. *Tatum*, 408 U.S. 1, 15 (1972).

The district court properly found that petitioners here launched just the sort of generalized attack on the overall operations of the Farm Credit System that the standing doctrine forbids. Petitioners made sweeping allegations that the federal respondents had ignored the Farm Credit Act's intent, had abused and usurped powers, and had taken a host of unspecified actions inconsistent with the statute (Pet. App. A16). The district court rightly concluded (*id.* at A17) that the complaint asked for a broad judicial investigation into the operations of the Farm Credit Administration, relief that petitioners have no standing to demand of a federal court. Although petitioners assert that the district court "failed to grasp the amorphis [*sic*] concept

of 'standing' " (Pet. 18), the district court's ruling is fully in accord with the standing principles articulated by this Court.

Indeed, it is also clear that petitioners have identified no specific injury that is fairly traceable to the wrongs of which they complain. The complaint contained no description of petitioners' harm, asserting merely that they have suffered "substantial injury and damages" (Pet. App. A27). The petition for certiorari asserts that "the present agricultural depression has been caused by the overall failure of the Farm Credit System to implement the Farm Credit Act" (Pet. 5). But not only is this a " 'generalized grievance[],' pervasively shared and most appropriately addressed in the representative branches." *Valley Forge*, 454 U.S. at 475 (quoting *Warth* v. *Seldin*, 422 U.S. 490, 499 (1975)). The injury petitioners allege is so vague, and the conduct of which they complain is so unspecified, that their complaint falls far short of demonstrating the kind of cause-and-effect relationship that this Court's standing decisions demand.[2]

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[2]Petitioners' complaint did make a few allegations of a less generalized nature, such as the contention that the federal respondents "fail[ed] to make [adequate] annual reports to Congress" and "prescrib[ed] and approv[ed] by-laws and regulations that are not consistent with the * * * Act" (Pet. App. A26). Yet these allegations likewise afford no standing. For example, petitioners failed to identify the challenged by-laws and regulations (see *id.* at A26-A27), and did not explain how the Board's asserted failure to file proper annual reports—reports that have in fact been filed annually with Congress—could have caused them any personal injury. Cf. *United States* v. *Richardson*, 418 U.S. 167 (1974). Indeed, petitioners nowhere explained how any of the Board's alleged violations caused them any injury.

It is therefore respectfully submitted that the petition for a writ of certiorari should be denied.

CHARLES FRIED
Solicitor General

AUGUST 1986